KEY TO BRIEFS

1 Motion for Leave to File Complaint, Complaint and Brief in Support of Motion

2 Opposition to Motion for Leave to File Complaint Against the State of Louisiana, and Brief in Support of Opposition

3 Memorandum for the United States in Reply to Louisiana's Brief in Opposition to Motion for Leave to File Complaint

4 Motion for Injunction and Brief in Support of Motion

5 Memorandum for the United States on Maintenance of Status Quo

6 Motion to Dismiss, and Defendant's Opposition to Plaintiff's Motion for Injunction, with Supporting Brief

7 Motion to Dismiss on Jurisdictional Grounds

8 Motion for Entry of Default and for Leave to Proceed ex parte and Brief in Support of Motion

9 Brief for the United States in Opposition to Defendant's Motion to Dismiss on Jurisdictional Grounds

10 Reply Brief of the State of Louisiana on Motion to Dismiss on Jurisdictional Grounds

11 Opposition to Plaintiff's Motion for Entry of Default and for Leave to Proceed ex parte and Supporting Brief

12 Application by Anderson-Prichard Oil Corporation, Lessee of Both Parties, for Extraordinary Relief and for Amendment or Interpretation of Decree

13 Brief in Support of Application by Anderson-Prichard Oil Corporation, Lessee of Both Parties, for Extraordinary Relief and for Amendment or Interpretation of Decree

14 Motion to Dismiss as Moot Application of Anderson-Prichard Oil Corporation for Extraordinary Relief and for Amendment or Interpretation of Decree and Memorandum in Support of Motion

15 Answer of the State of Louisiana

16 Motion by the State of Louisiana to Take Depositions

17 Motion for Judgment and Statement with Respect to Motion

18 Memorandum for the United States in Opposition to Motion by the State of Louisiana to take Depositions

19 Reply to the Motion for Judgment and to the Opposition of the United States to Louisiana's Motion to Take Depositions

20 Motion for Leave to File Intervention, Brief in Support of Motion, and Interveners' Answer

21 Brief for the United States in Support of Motion for Judgment

22 Memorandum for the United States in Opposition to the Motion of the Parishes of St. Bernard, Plaquemines, Jefferson, Iberia and St. Mary for Leave to File Intervention

23 Memorandum for Interveners in Answer to Opposition Memorandum by the United States

24 Brief of the State of Louisiana in Opposition to Motion for Judgment by the United States

25 Appendix to Brief on Behalf of the State of Louisiana

26 Motion for Reconsideration of Order Denying Right of Intervention, and Supporting Brief in Answer to U.S. Brief for Judgment

27 Reply of the State of Louisiana to Brief of the United States on Motion for Judgment

28 Brief for the United States in Reply to Louisiana's Opposition to Motion for Judgment, and in Opposition to Louisiana's Motion to Take Depositions

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47 Joint Memorandum of the States of Louisiana, Texas, Mississippi, Alabama, and Florida Pertaining to Schedule for Filing of Briefs and Order of and Allotment of Time for Oral Argument

48 Brief for the United States in Support of Motion for Judgment on Amended Complaint

49 Brief for the State of Alabama in Opposition to Motion for Judgment on Amended Complaint

50 Joint Brief for the Defendant States on Common Questions

51 Brief of the State of Texas

N.B. No "Key" numbers will be assigned to briefs filed after August 13, 1958. They shall be introduced by title targets.

have been given the opportunity to prove their claims, if they can, should not be taken as in itself a Congressional recognition of the validity of those claims.

VII. THE UNITED STATES HAS NOT RECOGNIZED A THREE-LEAGUE MARGINAL BELT

Louisiana refers (Brief 109–119) to various examples of exercises of authority by the United States at distances greater than three miles from the coast. There is no doubt that the United States has exercised and does exercise some authority, for customs, fiscal and sanitary purposes, at greater distances from the coast than three miles. This does not at all mean that the United States claims territorial possession of the waters to those distances. The areas in which such authority is exercised are called "contiguous zones." They are described, for example, in the recent Report of the International Law Commission of the United Nations, containing its proposed codification of the law of the sea (General Assembly, Official Records: Eleventh Session, Supplement No. 9 (A/3159), 1956, page 11), as follows:

> SECTION II. CONTIGUOUS ZONE
>
> *Article 66*
>
> 1. In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to
>
> (a) Prevent infringement of its customs, fiscal or sanitary regulations within its territory or territorial sea;

(b) Punish infringement of the above regulations committed within its territory or territorial sea.

2. The contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured.

In this connection, Louisiana refers (Brief, 114) to the Act of February 18, 1793, 1 Stat. 305, 314, which provided for licensing of coasting and fishing vessels, under which vessels so licensed were subject to seizure if found to be carrying foreign goods, without permission, within three leagues of the coast. That provision applied only to vessels enrolled under the law of the United States, and its jurisdiction rested on nationality rather than on territorial jurisdiction.

Louisiana likewise refers (Brief, 115–116) to American seizures of ships for piracy, within the limits of the Gulf Stream. Such seizures have no territorial significance, as pirates are liable to seizure anywhere on the high seas by vessels of any nation. *The Marianna Flora,* 11 Wheat. 1, 38.

Various speculative statements in Kent's Commentaries and in Jefferson's correspondence, that the United States might be justified in claiming more than three miles at some future time (Louisiana's Brief, 113–118), fall far short of showing actual recognition of such boundaries by the Government. The resolution of December 4, 1781, of the Continental Congress (Louisiana's Brief, 109), providing for seizure of ships carrying British goods within three

leagues of the coast, was limited to vessels "destined to any port or place of the United States". 7 *Journals of Congress* (1800) 185, 186; 21 *Journals of the Continental Congress* (1912) 1152, 1154. It was a wartime measure of embargo, not a general territorial claim. And the fact that the Continental Congress, in negotiating for peace with Great Britain, would if necessary have made certain concessions regarding fishing which in fact were not made (Louisiana's Brief, 109–112), does not amount to a recognition of territorial rights as belonging to Britain. Certainly it is not an assertion of similar claims by the United States. If anything, the treaty provision actually adopted, permitting American fishermen to fish up to the shores of British North America (8 Stat. 82), would negate claims to territorial waters altogether. However, as we have already explained (*supra*, pages 14–15), such treaty arrangements regarding fishing do not necessarily correspond to territorial limits.

VIII. LOUISIANA ACT 33 OF 1954 IS NOT JUSTIFIED BY ACTS OF CONGRESS

Louisiana argues (Brief, 119–130) that since its marginal belt is to be measured from the line marking the outer limit of inland waters, it has properly used for that purpose the line drawn by the Commandant of the Coast Guard delimiting the waters in which vessels must observe the inland rules of navigation. We have answered that contention in our opening brief, pages 130–136, although recognizing that the Court may prefer to defer that, together with other

questions as to identification of the base line, for consideration in supplementary proceedings. Little need be added to what we have already said on this subject. Louisiana's view is that it is justified in using the Coast Guard line as marking the limit of "inland waters" in the jurisdictional sense, because the Act of February 19, 1895, 28 Stat. 672, 33 U. S. C. 151, requires the line to be so drawn. That is not the construction which the Commandant of the Coast Guard has placed on the statute; on the contrary, he has construed it as requiring him to draw a line marking the areas where it will best serve the interests of navigation to follow the inland rules. The line along the Louisiana coast was drawn after a public hearing held in New Orleans, June 2, 1953, at which the public were invited to comment on the line proposed by the Commandant. Notice of that meeting was published in the Federal Register for May 1, 1953, and included the following statement (18 Fed. Reg. 2558):

> "The primary purpose for boundary lines and their establishment is and has been since 1895 to definitely indicate where the provisions of the international rules for navigation at sea apply and where the provisions of the navigation rules for harbors, rivers, and inland waters generally in 33 U. S. C. 155 to 222 shall apply and be followed by navigators of vessels. *These lines are based on the needs of safety in navigation.*" [Emphasis added.]

[1] If the Court prefers to postpone this subject to later proceedings where evidence can be introduced, the United States can produce the record of that hearing, showing that navigational convenience was the only matter considered.

This, of course, agrees with the statement included in the order establishing the line, quoted in our opening brief at pages 131–132. Whether or not the statute requires the Commandant to determine the limits of "inland waters" in the jurisdictional sense, it is clear that he has not undertaken to do so. There can be no justification for giving jurisdictional effect to a line drawn on a different assumption.

Louisiana refers (Brief, 125) to the case of *Porter* v. *United States* (*United States* v. *The Steam Vessels of War*), 106 U. S. 607, 612, which construed "inland waters" as used in Section 7 of the Act of July 2, 1864, 13 Stat. 375, 377, to mean "all waters of the United States upon which a naval force could go, other than bays and harbors on the sea-coast." That merely shows that "inland waters" can be used in various senses; for bays and harbors on the sea coast are certainly inland waters in the jurisdictional sense. Clearly the Commandant of the Coast Guard has construed "inland waters" in the 1895 Act in a sense other than jurisdictional; whether he is right or wrong, the line that he has drawn can only be understood as representing what he intended it to represent.

Reference is made (Brief, 124) to the Mississippi and Alabama boundaries as being "six leagues of the shore." Actually, those States are merely described in their enabling acts as "including all the islands within six leagues of the shore." 3 Stat. 348 (Mississippi); 3 Stat. 489, 490 (Alabama). The difference is obvious. See *supra*, p. 13, and our opening brief, pages 32–38. We have already pointed out (*supra*, p. 20) that the Florida boundary described by the con-

stitution of 1868 was three leagues in the Gulf of Mexico, rather than five as stated by Louisiana (Brief, 124).

IX. LOUISIANA SHOULD NOT BE ALLOWED TO INTRODUCE EVIDENCE WITH REGARD TO ITS PLEAS OF ACQUIESCENCE, ESTOPPEL OR PRESCRIPTION

Louisiana argues (Brief, 131–141) that it should be allowed to introduce evidence of its long-continued exercise of governmental and proprietary rights in the continental shelf. We submit that it is not appropriate for the Court to receive evidence on those subjects. It is *res judicata* that the State had no title in 1950, all rights in the submerged land of the continental shelf being then in the United States. *United States* v. *Louisiana*, 339 U. S. 699. The only title which the State can now claim is that granted by the Submerged Lands Act. Thus, evidence of past exercise of proprietary rights by the State is irrelevant. The State's boundary for jurisdictional purposes cannot exceed that of the United States.[8] The boundary of the United States is subject to judicial notice. Thus it would not be proper to receive evidence on that subject. See our opening brief, pages 62–81. These conclusions rest on the nature of the questions, and not, as Louisiana implies, on the relative sovereign status of the parties. However, we do assert that the United States is not subject to loss of its rights in the

[8] Louisiana takes the position that its boundaries and those of the United States are necessarily the same. Brief, 47–48, 130. Our position is that a State's boundary cannot extend beyond that of the United States, but may be less. See our opening brief, pages 102–103.

continental shelf by prescription. *United States* v. *California*, 332 U. S. 19, 39–40.

X. LOUISIANA'S MOTION TO TAKE DEPOSITIONS SHOULD BE DENIED

Louisiana's motion to take depositions indicates (pages 6–7) that they are to be on the subjects of (1) the extent of the State's historic boundaries in the Gulf of Mexico, (2) the possession, jurisdiction and control exercised by the State over the continental shelf, and (3) the nature of Louisiana's shoreline and its location when or before the State entered the Union.

We believe that no evidence should be received on the first two subjects, because they are irrelevant for the reasons just stated, and that leave to take depositions on those subjects should accordingly be denied, for the same reasons.

As to the third subject, it is our view that, if supplementary proceedings are necessary to identify specifically the area described in the decree to be entered on the Government's present motion, the case should be referred at that time to a Special Master for that purpose, and that the testimony which Louisiana desires should be taken before such Special Master, to the extent that it may be material, without the added burden of first taking it as depositions before a notary or other official. Where a case is to be referred to a Special Master before whom witnesses will testify, it is proper to deny an application to take prior depositions of those witnesses. *National Bondholders Corporation* v. *McClintic*, 99 F. 2d 595, 599–600 (C. A. 4).

Particularly must that be true here, where the proposed witnesses are all present (or in a few cases, former) officers or employees of the State or its instrumentalities and it is asserted (Motion, 6) that they will testify with respect to State records, so that there appears to be no need for discovery so far as the State is concerned.

Louisiana has given no reason for its desire to take these depositions, resting merely on its right to do so under Rule 26 (a), Federal Rules of Civil Procedure. Reply to the Motion for Judgment and to the Opposition of the United States to Louisiana's Motion to Take Depositions, page 3. However, Rule 30 (b) allows the Court, for cause shown, to order depositions not to be taken. We submit that under the circumstances of this case, the taking of the proposed depositions is wholly unnecessary and should be denied. At the least, it should be deferred until a decree has been entered on the present motion for judgment, so that it can be known what further subjects of inquiry will be material to the case. *Klein* v. *Lionel Corporation*, 18 F. R. D. 184, 185 (D. Del.); *Sogmose Realties* v. *Twentieth Century-Fox F. Corp.*, 15 F. R. D. 496 (S. D. N. Y.); *Air King Products Co.* v. *Hazeltine Research*, 10 F. R. D. 381 (E. D. N Y.); *Momand* v. *Paramount Pictures Distributing Co.*, 36 F. Supp. 568 (D. Mass.). The purpose of the rules relating to depositions "is clearly to lighten, not burden, the record; to minimize, not increase, expense," *Odum* v. *Willard Stores*, 1 F. R. D. 680, 681 (D. D. C.), and "The power of the court to prevent abuse of its process is very broad, before the exam-

ination under Rule 30 (b) and during the course of the examination, Rule 30 (d)." *United States* v. *Brussell Sewing Mach. Co.*, 3 F. R. D. 87, 88 (S. D. N. Y.).

So that our position may be clearly understood, we restate at this time our view that the location of the shoreline before or when Louisiana entered the Union is wholly immaterial to the case. However, this involves a question of construing the Submerged Lands Act with respect to the base line which it describes, which we think can be argued more appropriately in supplementary proceedings than at the present time.

CONCLUSION

We submit that the Government's motion for judgment should be granted and that Louisiana's motion to take depositions should be denied.

Respectfully,

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APRIL 1957.

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No. 11, Original

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES REGARDING THE MOTION OF THE STATE OF TEXAS FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 11, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES REGARDING THE MOTION OF THE STATE OF TEXAS FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

On May 27, 1957, the State of Texas submitted its brief as *amicus curiae* and moved for leave to file it herein. Its stated purpose is to urge the Court to decide this case in a way that will be limited to the State of Louisiana (Brief, 1). Specifically, Texas urges that it has a maritime boundary three leagues from the coast, and that any declaration of a general three-mile rule should recognize the existence of an exception in the case of Texas or at least should be without prejudice thereto (Brief, 4).

In support of its position, Texas refers to various historic episodes which it asserts amounted to recognition by the United States of the validity of the Texan claim. Some of them were relied on by Louisiana in its Fourth Defense (Answer, 21–24) and so were discussed by the parties in their briefs on the Government's motion for judgment (Government's

brief in support of motion, 138–148; Louisiana's brief in opposition, 96–106; Government's reply brief, 16–21). Others are new; and in addition to those stated, Texas asserts broadly the existence of "a host of diplomatic correspondence, records of treaty negotiations, State and Federal Statutes, legislative histories and court decisions" which support its claim (Brief, 6–7).

The untimeliness of Texas' application and the incompleteness of its discussion (see Brief, 3, 6) make it impracticable, even if it were otherwise appropriate, to undertake here any comprehensive argument on the merits of Texas' claims. If Texas had filed its brief before argument, as it had a right to do under Rule 42, Paragraph 4 of this Court's Rules, it would have been entirely proper for it to argue its points to aid the Court in the determination of those issues in this case in which Texas has an interest. But since Texas has presented its brief long after the case was submitted to the Court for decision and at a time in the Term when further briefing would seem inappropriate, we urge that the views of Texas on the issues before the Court should be given consideration only as a reminder that the Court does not have before it Texas's claims.[1]

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

MAY 1957.

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[1] In the Brief of the United States in support of its motion for judgment it was stated at page 150: "We shall not attempt in this case to argue the rights of either Texas or Florida under the Submerged Lands Act with respect to the continental shelf adjacent to their shores."

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NO. 10 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF LOUISIANA,
Defendant

MOTION FOR LEAVE TO FILE AND BRIEF OF THE STATE OF TEXAS, AMICUS CURIAE

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NO. 11 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

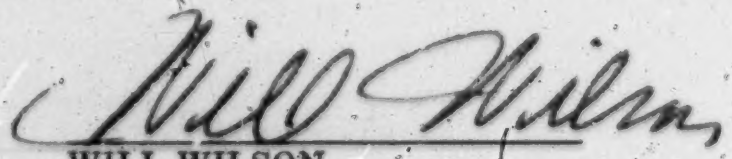
UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF LOUISIANA,
Defendant

MOTION FOR LEAVE TO FILE

The State of Texas, by its Attorney General, asks leave of the Court to file its Brief, Amicus Curiae, in the above entitled and numbered cause.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

NO. 11 ORIGINAL

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF LOUISIANA,
Defendant

BRIEF FOR THE STATE OF TEXAS, AMICUS CURIAE

PURPOSE OF THIS BRIEF

The sole purpose of this brief is to urge that in this case the Court's decision as to the extent of State and National boundaries in the Gulf of Mexico should be limited to the State of Louisiana.

Texas is not a party to this proceeding. However, Louisiana has injected the Texas three league boundary in support of its own claim and the reply brief filed by the Attorney General of the United States has contradicted the previous position of our Nation with respect to

the Texas boundary. Neither party has fully developed the Texas case, and a finding with respect to Texas is wholly unnecessary to a decision in this case.

The extent of the Gulfward boundary of Louisiana at the time that State entered the Union (or as heretofore approved by Congress) is the only issue which requires the determination of this Court. It is to that boundary, and no other, that the Submerged Lands Act quitclaimed the subsoil and sea bed of the Gulf to the State of Louisiana.

Louisiana's Gulfward boundary as a territory and a State was fixed long before Texas won its independence and established its *three league* boundary in 1836. Obviously, the extent of the Texas boundary is in no way controlling as to Louisiana.

It is unnecessary in this case to decide the issue of whether our Nation has always and exclusively followed a general three mile rule as to the limit of seaward boundaries without giving other affected States an opportunity to be heard. The United States Congress recognized that exceptions exist in the Gulf of Mexico when it provided in Section 2(b) of the Submerged Lands Act (67 Stat. 79) that the term "boundaries" shall not be interpreted as

> "extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than *three marine leagues into the Gulf of Mexico.*"

Again in Section 4 of the same Act the Congress provided:

> ". . . Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary *beyond three geographical miles* if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

The question in this case is whether Louisiana's boundary is an exception to the three mile rule generally adhered to by the United States. The answer does not require a decision which would apply to Texas or in any manner prejudice or question Texas' long recognized *three league* boundary as a permissable and recognized exception.

There is an abundance of evidence and law not now before this Court which will show without question that Texas' *three league* boundary in the Gulf of Mexico existed before and after annexation. In fact, the outstanding exception to its general three mile rule occurred when the United States annexed the independent Republic of Texas, a nation which already had an established and recognized Gulfward boundary of three leagues, all of which was added to the Union after a written promise from the President of the United States to defend that boundary.

It is improper and impossible for Texas to develop all of its case in an amicus curiae brief. Thus, the limited purpose here is to acquaint the Court briefly with the

nature of the Texas case and to suggest that any application of a general rule of seaward boundaries should be with recognition of the exception applicable to Texas or at least without prejudicing the case of Texas in a proceeding to which the State is not a party.

HISTORY OF THE TEXAS BOUNDARY

For 120 years, first as an independent nation and then as a State, Texas' boundary in the Gulf of Mexico has been fixed at three leagues (10.486 statute miles; 9 nautical miles) from shore. That is the extent to which Texas has continuously exercised its jurisdiction and enforced its laws.

The Texas Boundary Act was enacted by the First Congress of the Republic of Texas on December 19, 1836, and the applicable portion reads as follows:

> "Sec. 1. Be it enacted by the senate and house of representatives of the republic of Texas, in congress assembled, That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico *three leagues* from land, to the mouth of the Rio Grande, thence up the principal stream," etc.[1]

The Gulfward boundary of three leagues thus established from its inception has been recognized on many occasions by the United States. The evidence of such rec-

[1] 1 Laws, Republic of Texas 133; 1 Gammel's Laws of Texas 1193-1194.

ognition consists, in part, of the Resolution of the United States Senate adopted March 2, 1837, recognizing the independence of the Republic of Texas,[2] the joint resolution passed by the Congress of the United States on March 1, 1845, providing for the annexation of Texas,[3] the Treaty of Guadalupe Hidalgo in 1848,[4] and the Gadsden Treaty (1853).[5]

The Texas Boundary Act was read to the United States Senate before the resolution was adopted recognizing Texas' independence in 1837 and again before adoption of the annexation resolution.[6] Before recognition, on December 22, 1836, President Andrew Jackson said: "The title of Texas to the territory she claims is identified with her independence . . . ."[7]

While annexation was being negotiated, officials of the Republic of Texas insisted upon assurances from the United States that it would defend the boundaries already established and maintained for 9 years by the Republic of Texas. The reply was a solemn promise from the Persident of the United States, James K. Polk, by letter dated June 15, 1845, to Andrew Donelson, U. S. Charge d'Affaires, who was negotiating with Texas officials, in which President Polk said:

> "Of course, I would maintain the Texian title to the extent which she claims it to be. . . ."[8]

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[2] Cong. Globe, 24th Cong., 2nd Sess. 270.
[3] 5 Stat. 797.
[4] 9 Stat. 922-926.
[5] Cong. Globe, 33rd Cong., 1st Sess. 1568.
[6] Appendix to the Cong. Globe, 28th Cong. 1st Sess. 549.
[7] Cong. Globe, 24th Cong., 2nd Sess. 45.
[8] The Papers of President ames K. Polk, vol. 72, p. 6767, Library of Congress.

The United States kept this agreement by fighting the War with Mexico and upheld the Texas three league boundary in the Treaty of Guadalupe Hidalgo which ended the war. Article 5 of that treaty contains this language:

> "The boundary between the two Republics shall commence in the Gulf of Mexico, *three leagues* from land, opposite the mouth of the Rio Grande . . ."[9]

Current "presumptions" and "assumptions" of the State and Justice Departments that this three league distance was inserted not as a real boundary but just to help prevent smuggling do not accord with the facts of history. Federal and State Archives contain the truth, and it can and will be shown this Court if ever necessary. Evidence will show conclusively that the Legislature of Texas and members of the United States Senate insisted on the Treaty following the language of the Texas Boundary Act of 1836, and this is exactly what Secretary of State Buchanan instructed our negotiator to do.[10]

The three league boundary line was actually surveyed in the Gulf and marked as the international boundary between the United States and Mexico in 1911. A reproduction of a map thereof, published by the State Department itself, appears opposite this page.

To the foregoing could be added a host of diplomatic correspondence, records of treaty negotiations, State and Federal Statutes, legislative histories and court deci-

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[9] 9 Stat. 922-926.
[10] Dept. State, 16 instructions, Mexico, 46, 62.

Note

Map Exhibit which follows page 6 is on Card 23, at top left. Portions are irretrievably reduced in the original.

sions, all leading to the compelling conclusion that the National and State boundary of Texas historically and consistently has been at the line of three marine leagues in the Gulf of Mexico. So far as the Federal Government is concerned, nothing has occurred to diminish or change that boundary."

President Eisenhower has on numerous occasions recognized the three league boundary of Texas. In a speech in Houston, Texas, on October 14, 1952, Mr. Eisenhower gave his full support to the Submerged Lands Bill, and said with specific reference to Texas:

> "And so the State of Texas paid off the ten million dollar debt of the Republic. It kept its two hundred million acres of land—including the submerged area extending *three marine leagues* into the Gulf of Mexico."

The sepcific issue was raised by Senator Anderson and 24 other Senators in a letter to President Eisenhower while the Submerged Lands Bill was pending in the Senate in 1953, in which they complained that his leaders in Congress were supporting a bill that would "set up State sovereignty within a 3-mile belt for every coastal State, except Florida and Texas, where the belt would be 10½ miles" (3 leagues). The Senators went on to say:

> "We would like to know, for instance, whether

" The holding of this Court in *United States v. Texas* does not deny the existence of the three league boundary in the Gulf of Mexico. 339 U. S. 707. On the contrary, the Court said: "Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held." (717).

> Congress has, in fact, 'heretofore' approved any boundaries in the sea greater than 3 miles for any State, and if so, what State and what boundary?" (Cong. Rec. April 22, 1953, p. 3532)

President Eisenhower replied to this letter on April 24, 1953. (Cong. Rec. April 25, 1953, p. 3865) He gave his complete support to the pending measure as worded, and took occasion to make specific reference to Texas by quoting from his Houston speech as follows:

> "And so the State of Texas paid off the ten million dollar debt of the Republic. It kept its two hundred million acres of land—including the submerged area extending *three marine leagues* seaward into the Gulf of Mexico."

The President went on to say:

> "My position is the same today. It was further amplified by the Administration representatives in the hearings before the Senate and your Committees considering the legislation."

The administration representatives referred to by President Eisenhower were Secretary of Interior Douglas McKay and Attorney General Herbert Brownell, both of whom testified that they recognized that three leagues was the historic boundary of Texas and the West Coast of Florida and that the Submerged Lands Bill would extend to such distance in those two instances. Senator McKay testified:

> "I mean the 3-mile limit as far as my State is concerned. I mean 3 leagues as far as yours, sir, that is, Texas and Florida. . . . Senator, I think

they are all alike except for two States, Florida and Texas. I believe the other are all 3 miles.'"[11]

Attorney General Brownell recommended that the Senate Committee draw the historic boundaries on a map and attach it as a part of the bill. Upon being asked at what distance he would draw the line for the coastal states, he said:

"Our thought generally, Senator, without going into great detail, is that this line would be 3 miles out, except in the case of Texas and the west coast of Florida."[12]

He testified further as follows:

"Attorney General Brownell. In order that there may be no misunderstanding, generally speaking, what we have in mind is the 3-mile line, except for the coasts of Texas and the west coast of Florida, where *3 leagues* would generally prevail.

"Senator Holland. The reason you make those two exceptions is because it is your understanding that the constitutions of Texas and Florida provide that the 3-league off-shore limit is the limit clear across Texas and along the west coast of Florida in the Gulf of Mexico?

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[11] Hearings on SJR 13, Senate Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess., 529, 535. Secretary McKay also testified to the House Committee: "In most cases of these States, it is 2 miles to sea, except in Texas and Florida, where it is, of course, 3 leagues." Hearings before Subcommittee No. 1, House Juidicary Committee, 83rd Cong., 1st Sess., 181.

[12] Hearingson SJR 13, Senate Committee on Interior and Insular Affairs, 83rd Cong., 1st Sess., 931.

"Attorney General Brownell. That, plus the action of Congress in relation to it.

"Senator Holland. That, plus the action of Congress approving those two constitutions?

"Attorney General Brownell. Yes."[14]

Even the State Department's representative at these hearings acknowledged the three league boundaries of Texas and the West Coast of Florida to be exceptions to the 3 mile rule generally adhered to by the United States. Mr. Jack B. Tate, Deputy Legal Adviser, Department of State, testified as follows:

"Senator Daniel. As to this matter of Texas, you do recognize, sir, that some nations of the world have claimed more than 3 miles as their limit of territorial waters?

"Mr. Tate. That is right.

"Senator Daniel. As a matter of fact, I have just counted them, and find, beginning at page 511 of the hearings on Senate Joint Resolution 20 in 1951, that there are 16 nations of the world which have for a great number of years claimed wider territorial belts than 3 miles.

"Mr. Tate. I would say there are at least 16. . . .

* * * *

"Senator Daniel. We were admitted in accordance with the boundaries that were established at

[14] Id., 957.

that time. There was no protest against our 3-league boundary by the United States, was there?

"Mr. Tate. Not that I know of.

"Senator Daniel. Then in 1848, after the War with Mexico, the United States entered into the Treaty of Guadalupe Hidalgo. All the records before this committee show that the Secretary of State told our negotiators to follow the boundaries of Texas as set up by the Republic of Texas and maintained for 9 years. We find in the Treaty of Guadalupe Hidalgo these words, quoting now from the treaty:

" 'The boundary line between the two Republics shall commence in the Gulf of Mexico three leagues from land opposite the mouth of the Rio Grande.'

"You are familiar with that, sir?

"Mr. Tate. That is right.

"Senator Daniel. Then we do have the United States by treaty recognizing a boundary between Mexico and the United States as being the same boundary that Texas claimed as an independent nation three leagues out in the Gulf, is that not correct?

"Mr. Tate. At that point; yes.

"Senator Daniel. That is correct, is it not?

"Mr. Tate. That is right. . . .

"Senator Daniel. So there at least are two instances in which our Nation by official action has recognized boundaries in the Gulf of Mexico a greater distance than 3 miles from shore; is that not correct, sir?

"Mr. Tate. I think so; yes."[55]

"Senator Daniel. As to the State of Florida, its constitution, after the Civil War, provided that on the Gulf coast side, that is the shallow-water side, its boundary should go out 3 leagues from shore, and that was approved by the United States Congress. You are familiar with that, are you not?

"Mr. Tate. I understand that to be true; yes.

RECOGNITION BY CONGRESS

If the need and opportunity arises, Texas can show recognition of its three league Gulfward boundary by the Congress on at least ten occasions since 1836. For the limited purposes of this brief, reference is made only to the latest clear recognition in the Submerged Lands Act (P. L. 31, 67 Stat. 79) that exceptions to this country's general 3 mile rule have existed and do now exist.

As previously stated, the Act itself expressly recognizes territorial rights beyond three miles into the Gulf of Mexico. For example, a portion of the definition of the term "lands beneath navigable waters" contained in Section 2(a) of the Act includes

"all lands permanently or periodically covered by

[55] Id., pp. 1075, 1077, 1078.

tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, *extends seaward (or into the Gulf of Mexico) beyond three geographical miles.*"

Further, the term "boundaries" is defined in Section 2(b) of the act as follows:

"the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 4 hereof but in no event shall the term 'boundaries' or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than *three marine leagues into the Gulf of Mexico.*"

Finally, Section 4 of the Act provides:

". . . Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary *beyond three geographical miles* if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress."

A careful examination of the committee hearings and the extended debates on this legislation will reveal that

proponents and opponents alike were in agreement that the effect of the bill would be to restore to Texas the submerged lands *three leagues* from shore, because there was no dispute about the fact that the Texas Gulfward boundary was at such distance "at the time such State became a member of the Union."

Twice on the Senate floor amendments were offered to limit the effect of the bill to 3 miles for each State. On both occasions Senator Daniel of Texas presented the undisputed evidence that Texas' Gulfward boundary has existed at 3 leagues since 1836, and the 3 mile amendments were defeated."

Once in the House a similar 3 mile amendment was offered, and after Congressman Wilson of Texas explained the Texas 3 league boundary, the 3 mile amendment was defeated by a vote of 83 to 17."

It seems obvious that the recognition of Texas' 3 league boundary by President Polk (and his promise to defend it as part of the annexation negotiations), by the Congress of the United States, by President Eisenhower, and in the Treaty of Guadalupe Hidalgo are of far greater force and effect than a 1956 letter by Secretary of State Dulles declaring this country's general adherence to a 3 mile rule of territorial waters.

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[10] Cong. Rec. April 29, 1953, pp. 5318-4323; Cong. Rec., May 5, 1953, pp. 4635-4636.

[11] Cong. Rec., March 31, 1953, pp. 2567-2569.

CONCLUSION

The Court's decision in this case should be limited to the State of Louisiana. In no event is it necessary for the Court to apply a general rule of boundary which would question or fail to recognize Texas' long established three league boundary in the Gulf of Mexico in a proceeding to which the State is not a party.

Respectfully submitted,

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PROOF OF SERVICE

I, Will Wilson, Attorney General of Texas, certify that I have mailed copies of the foregoing Motion and Brief to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington, D. C. and to Honorable Jack P. F. Gremillion, Attorney General of Louisiana, at the State Capitol, Baton Rouge, Louisiana.

WILL WILSON

Office - Supreme Court, U.S.
FILED
JUN 6 1957
JOHN T. FEY, Clerk

No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

Memorandum for the State of Louisiana Regarding the Motion of the State of Texas for Leave to File a Brief as Amicus Curiae, and the Memorandum by the United States in Response Thereto.

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No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

Memorandum for the State of Louisiana Regarding the Motion of the State of Texas for Leave to File a Brief as Amicus Curiae, and the Memorandum by the United States in Response Thereto.

PURPOSE OF THIS MEMORANDUM

Louisiana does not desire to become burdensome to this Honorable Court by continually filing briefs in this cause. However, since the Court has allowed the Amicus Curiae Brief of the State of Texas, we find it mandatory for Louisiana to file this memorandum.

This is particularly true because the brief of Texas contains inaccurate statements as to the issues involved and to interpretations of the Submerged Lands Act.

For these reasons, we find it is necessary to submit this brief.

STATEMENT

On June 3, 1957 this Court granted the State of Texas leave to file its motion and brief as Amicus Curiae.

Louisiana re-asserts its claims as heretofore presented in its answer and briefs filed in this matter and without abandoning its said claims files this memorandum in connection with the brief Amicus Curiae aforesaid.

In its brief as amicus curiae the State of Texas says that the gulfward boundary of Louisiana at the time that it entered the Union is the only issue which requires the determination of this Court, and that the extent of the Texas boundary is in no way controlling as to Louisiana (Tex. Brief, p. 2). Texas also states that the question in this case is whether Louisiana's boundary is an exception to the three mile rule generally adhered to by the United States. (Tex. Brief, p. 3). These are not correct or accurate statements as to the issues here involved.

The first question involved in this case is the location of the national boundary of the United States in the Gulf of Mexico. A determination of that boundary determines also the boundary of Louisiana because the boundaries of the coastal states in the continental United States are co-extensive with the boundary of the United States in the seas surrounding its shores. (See Senate Report No. 133, 83rd Congress, 1st Session, p. 59, setting forth the legislative history of the Submerged Lands Act and the Outer Continental Shelf Lands Act. See also cases cited, pages 38 to 42 of Louisiana's brief in opposition to motion for judgment by the United States).

If the national boundary extends to the edge of the continental shelf, as Louisiana contends, then Louisiana's boundary also extends that far. On the other hand, if the boundary of the United States is only three leagues from coast in the Gulf of Mexico, then Louisiana's boundary also extends three leagues from coast in the Gulf of Mexico. There is no difference between the position of Texas and Louisiana with respect to these boundaries. Texas has, by the act of its legislature declared its boundaries to be the edge of the continental shelf in the Gulf of Mexico. (Article 1592A, Revised Civil Statutes of Texas, Acts of 1947, 50th Leg. p. 490, Ch. 287). There is no doubt that when Texas was admitted to the Union its boundaries were fixed three leagues from land in the Gulf of Mexico. Louisiana has insisted throughout this proceeding that the boundaries of Texas and of Florida have been definitely fixed as three leagues in the Gulf of Mexico prior to the time when Texas extended its boundaries to the edge of the continental shelf. Since the boundaries of Texas and of Florida have been so fixed and have been recognized by the various acts of Congress as three leagues in the Gulf of Mexico, these boundaries cannot be changed by Congress, nor by the Court, without the consent of these states. See: *New Mexico vs. Colorado*, 267 U. S. 30, 69 L. Ed. 499; *Louisiana vs. Mississippi* 202 U. S. 1, 50 L. Ed. 913; *Shively vs. Bowlby*, 152 U. S. 1, 27, 38 L. Ed. 331, 341.

Louisiana has consistently taken the position that

the Congress and the Court must recognize the boundaries of Texas and Florida as extending three leagues into the Gulf of Mexico. This state has also taken the position that prior to the passage of the Outer Continental Shelf Lands Act the United States has consistently declared its national boundary to be three leagues from coast in the Gulf of Mexico, and it has never asserted that the national boundaries in the Gulf of Mexico are only three miles offshore. This position is amply supported by the various treaties and other authorities which are discussed on pages 96 to 106, inclusive, of Louisiana's original brief.

Louisiana's boundary in the Gulf of Mexico is described in the act of admission as including all islands within three leagues of its coast. This boundary has always been considered by the State and by the United States to include also the submerged lands within three leagues of its coast. Consequently, Louisiana has from time immemorial occupied and possessed these submerged lands under a claim of ownership by virtue of its act of admission. These facts can be proved by the testimony of witnesses, and documentary evidence from the archives of the State and of the United States. If the court should conclude that the act of admission does not definitely fix Louisiana's boundary as three leagues from the coast in the Gulf of Mexico, we submit that the definition of Louisiana's boundary in the act of admission is susceptible to more than one interpretation. We, therefore, further submit that the Court either

recognize the boundary as having been fixed as three leagues in the Gulf of Mexico in Louisiana's act of admission or else it must seek facts which would aid the court in properly interpreting this boundary. In so doing, we urge the Court to consider:

1. The manner in which the act of Congress admitting Louisiana has been interpreted by the State and the Federal Government over a long period of time.

2. The Court should as a matter of law interpret the act of admission as one intending to put Louisiana on an equal footing with the other gulf coast states in the matter of territorial sovereignty in the waters and submerged lands adjoining its coast.

The Submerged Lands Act in Section 4 specifically gives to the State the right to prove that its boundaries are at least three leagues from coast in the Gulf of Mexico. This section of the act (43 U.S.C. 1312) contains the following significant sentence:

> "Any claim heretofore or hereafter asserted whether by constitutional provision, statute, *or otherwise*, indicating the intent of a state so to extend its boundaries (beyond three miles) is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line."

The foregoing provision definitely gives to Louisiana the right to prove its boundaries extend more

than three miles into the Gulf of Mexico. It accords to any coastal state the right to establish its claim to submerged lands and waters more than three miles offshore. The concluding sentence in this same Section 4 of the Submerged Lands Act is specifically applicable to Texas and Florida and under a proper interpretation of Louisiana's act of admission is applicable to Louisiana also. This sentence reads:

> "Nothing in this section is to be construed as questioning or in any manner prejudicing the extent of any state's seaward boundary beyond three geographical miles if it were so provided by its constitution or laws prior to or at the time such state became a member of the union, or if it has been heretofore approved by Congress."

Section 4 of the Submerged Lands Act is thus explained in House Report No. 215, page 6, outlining the legislative history of the act:

> "Title II authorizes and confirms the boundaries of the coastal states to be 3 geographical miles distant from its coastline or the international boundary in the Great Lakes or any body of waters traversed by such boundary. While it approves claims of states to so extend their boundaries to that line, it provides further that Section 4 of the act is not to prejudice the existence of any state's historic seaward boundary into the Atlantic or Pacific Oceans or the Gulf of Mexico or any of the Great Lakes beyond these three miles if it was so provided by any treaty of the United States or any act of Congress or the

constitution or laws of the state prior to or when it entered the union or has been or shall be approved by Congress."

The original Holland Bill in the matter of historic boundaries was not changed in this respect by the Senate on final passage of the Submerged Lands Act. Senate Report No. 133, p. 2 states:

> "The only change of substance is found in Section 9, in which the jurisdiction and control of the Federal Government over the national resources of the sea bed of the continental shelf seaward of historic boundaries is confirmed. This assertion gives the weight of statutory law to the jurisdiction asserted by the proclamation of the President of the United States in 1945."

In this connection it may be noted that the presidential proclamation was made without prejudice to the claims of any of the coastal states. Louisiana, therefore, has the right to prove any way that it can, by oral or documentary evidence that its historic boundaries extend more than three miles in the Gulf of Mexico under the terms of the Submerged Lands Act itself.

The statement in the Texas brief that the extent of the Texas boundary is in no way controlling as to Louisiana is misleading and untenable in view of the "equal footing clause" contained in the acts of admission of all of the gulf coastal states, including Louisiana and Texas. Louisiana cannot be maintained on any equal footing with Texas and Florida if

the sovereignty of these latter states is declared to be three marine leagues distant in the gulf, and Louisiana is restricted to three geographical miles. If the Court should interpret Louisiana's act of admission to mean that Louisiana's seaward boundary is less than three leagues and that its sovereignty over the bed and waters of the gulf does not extend as far as the sovereignty of other gulf coastal states, it will do violence to the "equal footing clause".

Louisiana is not suggesting to the Court that the boundaries of Texas and Florida be restricted to three miles. These boundaries cannot be changed without the consent of these states as set forth hereinabove. Louisiana does say that it is entitled to be maintained on an equal footing with these states, and that its boundaries should be recognized in a way that will place Louisiana on an equal footing with its sister states in the Gulf of Mexico. If in considering this question it is necessary for the court to state what the boundaries of Texas and Florida are, this duty is not to be avoided simply because Texas and Florida are not parties to this litigation.

Further in its brief the State of Texas does not endeavor to support the position of either party litigant; its avowed sole purpose is to urge that this Court's decision as to the extent of state and national boundaries in the Gulf of Mexico should be limited to the State of Louisiana. Texas concludes, however, that the Submerged Lands Act should be interpreted so that submerged lands three leagues from the

Texas shore are owned by Texas because there was no dispute about the fact that the Texas Gulfward boundary was at such distance at the time the state became a member of the Union.

We emphasize the fact that there was no dispute about the Louisiana gulfward boundary at the time of its admission in 1812. The issue presently before the Court is not whether the United States disputed the claimed boundary of any state as it entered the Union, but rather whether the Congress gave the Submerged Lands Act meaning when it employed the following language:

> "Section 4. Seaward Boundaries.
>
> . . . Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of *any* State's seaward boundary beyond three miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the union, or if it has been heretofore approved by Congress." (Emphasis added).

In the Submerged Lands Act Congress was very careful to avoid limitation of State boundaries, even though the term "boundaries" was used, and did not see fit to describe the boundaries of coastal states, though Congress could have done so.

The Submerged Lands Act and the Outer Continental Shelf Lands Act together constitute the unmistakable assertion by the political branches of our

government, the President and the Congress concurring, as to the extent of our national territory and as to the further extent to which our nation asserts rights appertaining to our continent but beyond our national territory.

The extent of our national territory was made to coincide with the extent of the territory of the several states for in the Atlantic and Pacific Oceans the Submerged Lands Act quitclaimed to the littoral states the land to the extent of three miles from the coast and the Outer Continental Shelf Land Act defined the area with which it deals as being seaward of the land just described, and in said Act state limits in the Great Lakes were recognized as extending to the international boundary.

The same approach is made as to the Gulf of Mexico but recognizing that the vastly different physical nature of that coast (for one example islands here actually change position from year to year. Some have changed position as much as nine or ten miles) justified and required different treatment and provided for state boundaries being fixed as far as three leagues from coast if AS A MATTER OF FACT they were so located before or at the time the gulf states came into the Union or had thereafter so been recognized by the Congress.

This policy is a political question and has been decided by the political branches of our government.

The question of fact was left for judicial determination.

The Congress was fully aware of its own acts respecting the admission of the gulf states. All such acts were paraded before its committees before these two statutes, the Submerged Lands Act and the Outer Continental Shelf Land Act, were passed. Congress chose to establish a policy and to let the boundary be fixed judicially according to facts and according to other laws but within the scope of that policy.

The argument of the Solicitor General would negate all of this, would have the Court declare that any or every state which had a boundary more than three miles from coast before or at the moment of entering the Union had the excess sheared off and cast into the international arena as the state entered the Union. Such reasoning would render the Submerged Lands Act a Congressional and Presidential fraud upon the Gulf Coast States. If that reasoning stood, every Gulf Coast State would have to be limited to three miles from coast though the Congress and the President said otherwise.

If the Government's motion is overruled, as we think it must be, each state then presents its case.

On the face of the act of admission of Louisiana coupled with the clear language of the treaty of cession by which the purchase of the Louisiana territory was confected, it is clear that Louisiana has its boundary no less than three leagues from its coast. If this Honorable Court entertains any uncertainty of this score, Louisiana is surely entitled to submit evidence.

to support its position which it could not do on the Government's motion.

There is no contest between the several Gulf Coast States, rather an opportunity is afforded to every one to establish its claim as respects that State and the Union.

The fact that any one Gulf Coast State can prove such a historic boundary, of course, should dispel the *notion* that there ever was a national limitation of three miles in the Gulf of Mexico. We call it a *"notion"* because no official declaration of such a policy has yet been cited excepting only the current letter from Mr. Dulles to Mr. Brownell.

We note that the International Law Commission of the United Nations saw fit to consider territorial sea widths of twelve miles as reasonable and not in violation of the principle of freedom of the seas. There is no reason why a delimitation of American Territorial Seas in the Gulf of Mexico to three leagues would be inconsistent with the principle of freedom of the seas. Congress itself has recognized this difference in the Gulf of Mexico. There is no reason, therefore, to resort to a strained interpretation to read any other meaning into the Submerged Lands Act.

We can conceive of no clearer expression which Congress could have made which would more unqualifiedly have set out equal rights of any and all states in the Gulf of Mexico to prove their historic boundaries.

We think the conclusion obvious that the Congress most certainly did have in mind the rejection of the three mile limit and the approval of an American territorial sea in the Gulf of Mexico not to exceed three leagues from coast.

Respectfully submitted,

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PROOF OF SERVICE

I, _____, one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the _____ day of June, 1957, I served copies of the foregoing Memorandum for the State of Louisiana Regarding the Motion of the State of Texas for Leave to File a Brief as Amicus Curiae, and the Memorandum by the United States in Response Thereto, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and by mailing copies thereof to the Attorney General of the State of Texas at Austin, Texas.

_____

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NO. 11, ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA,
Plaintiff

v.

STATE OF LOUISIANA

INTERVENTION OF THE STATE OF ALABAMA WITH SUPPORTING BRIEF

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Extracts from Submerged Lands Act 28

Extracts from Outer Continental Shelf Lands Act 29

Note: Pertinent parts of the Statutes and Congressional Acts relating to Alabama's historical boundary have been set forth in the argument.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

NO. 11, ORIGINAL

UNITED STATES OF AMERICA

Plaintiff

v.

STATE OF LOUISIANA

INTERVENTION OF STATE OF ALABAMA WITH SUPPORTING BRIEF AND ARGUMENT

Now comes the State of Alabama and intervenes in the above-styled suit pursuant to leave granted by the Supreme Court of the United States by decree dated June 24, 1957.

CLAIM OF STATE OF ALABAMA

The State of Alabama claims all lands, minerals, natural resources and other things, permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward from the coast line of the State of Alabama, three marine leagues into the Gulf of Mexico. Coast line, as above used, means the line of ordinary low water along that portion of the coast which is in direct contact with the sea and the line marking the seaward limit of inland waters.

QUESTION PRESENTED

Is the State of Alabama entitled against the United States of America, by reason of ownership, or paramount rights or otherwise, to the lands, minerals, natural resources and other things underlying the hereinabove described waters?

BASIS FOR CLAIM

Alabama claims by virtue of the Submerged Lands Act, Public Law 31, 83d Congress, 1st Session, approved May 22, 1953, 67 Stat. 29; the decisions of the Supreme Court of the United States in **United States v. California,** 332 U.S. 19; **United States v. Louisiana,** 339 U.S. 699; **United States v. Texas,** 339 U.S. 707 and **Alabama v. Texas** and **Rhode Island v. Louisiana, et al.,** 347 U.S. 272; its Constitution or laws prior to or at the time Alabama became a member of the union, and by evidence of its historical boundaries.

RESERVATION OF CLAIMS

The State of Alabama presents its claim relying upon the comparatively recent decisions of the court as above set forth and the validity of the Submerged Lands Act as treated in **Alabama v. Texas** and **Rhode Island v. Louisiana.** If the court for any reason changes its former decisions and arrives at any other or different result, Alabama reserves the right to then present its claims under the law as then declared. Alabama does not question the validity of the Submerged Lands Act in this suit but claims under it.

Alabama urges the court to state, before taking evidence, whether or not it adheres to the **California, Louisiana** and **Texas** cases, supra, and whether or not

the rights of the interested states are derived solely from the Submerged Lands Act. To do so would chart the course, simplify the procedure and eliminate many alternative positions brought about by the uncertainty on the part of the states as to the present court's position on these matters.

ANSWER TO COMPLAINT OF UNITED STATES

FIRST

The complaint filed herein by United States of America, Plaintiff, against the State of Louisiana, makes no allegations directed specifically at the State of Alabama but all of the articles thereof except Article I. relating to jurisdiction, and Article III, relating to the decree of this Court in the case of **United States v. Louisiana,** 340 U.S. 899, contain allegations which expressly or by implication relate to or affect the claim of the State of Alabama, and the State of Alabama denies all of such allegations except as expressly admitted in this pleading.

SECOND

The State of Alabama has been advised by letter dated July 10, 1957, from J. Lee Rankin, Solicitor General, that after studying the per curiam order of this Court:

> "* * * it appears clear that regardless of whether individual states intervene, the United States will have to amend or supplement its complaint in No. 11 Orig. to include all lands and issues between the United States and additional parties."

and so the State of Alabama reserves the right to plead

further herein after the United States amends or supplements its complaint.

THIRD

More specifically answering the present complaint of the United States filed December 19, 1955, then No. 15 Original, October Term 1955, the State of Alabama says:

I

No answer is required to Article I.

II

Prior to the decision of this Honorable Court in **United States v. California,** 332 U.S. 19[1] there was no official recognition of any claim of the United States as against the states which compose it to submerged lands lying off the coast and that decision was that "the Federal Government rather than the state has paramount rights in and power over (the three mile belt) an incident to which is full dominion over the resources of the soil under that water area, including oil." The Submerged Lands Act[2] and the Outer Continental Shelf Lands Act[3] were passed by Congress and signed by the President in 1953, the first to confirm and establish the titles of the states and of the United States within the limits prescribed by the statute, and the second to provide for the jurisdiction of the United States over the submerged lands

1 67 S.Ct. 1658
Followed in U.S. v. Texas, 339 U.S. 707, 94 L.ed. 1221 U.S. v. La., 340 U.S. 899.

2 67 Stat. 29, 43 U.S.C. 1301.

3 67 Stat. 462, 43 U.S.C. 1332.

of the outer continental shelf, and the United States has no rights to the lands and natural resources in controversy except as set forth in said statutes, the assertions of the United States to the contrary notwithstanding. Accordingly, the State of Alabama denies that the United States has been or is now entitled to possession and dominion and power over the lands and minerals underlying the Gulf of Mexico except those extending seaward from a line three marine leagues from the coast as defined in the Submerged Lands Act.

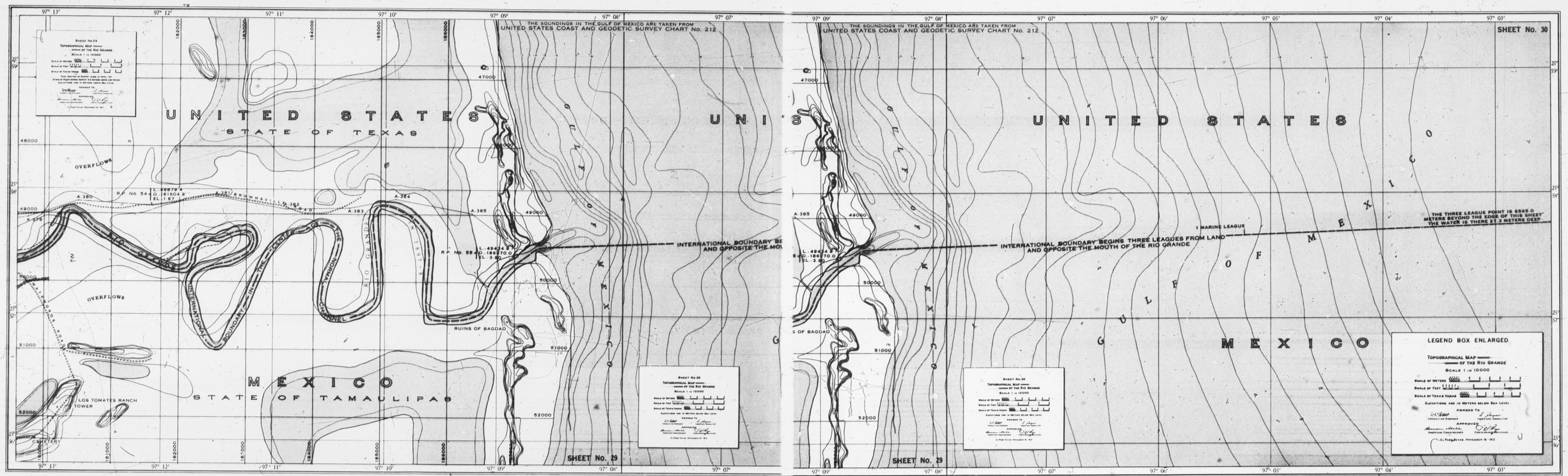
III

Article III of the Complaint relates only to the State of Louisiana and requires no answer.

IV

Article IV in part relates to the release of a claim for money asserted by the United States against the State of Louisiana, as to which no answer is required by the State of Alabama. For the remainder of the Article, it is an attempt on the part of the United States to paraphrase the statements contained in the statutes referred to and requires no answer. Moreover the Submerged Lands Act recognized, confirmed and established title to and ownership of the submerged lands and natural resources in intervenor, the State of Alabama, and all states bordering the Gulf of Mexico, and released and relinquished unto said states all right, title and interest of the United States, if any it has thereto, within the states' historic boundaries but not beyond three marine leagues into the Gulf of Mexico from the coast.[1]

[1]Sec. 2 (b), 67 Stat. 29.



[Map appearing after Page 6 of Texas Brief – (No. 30)]

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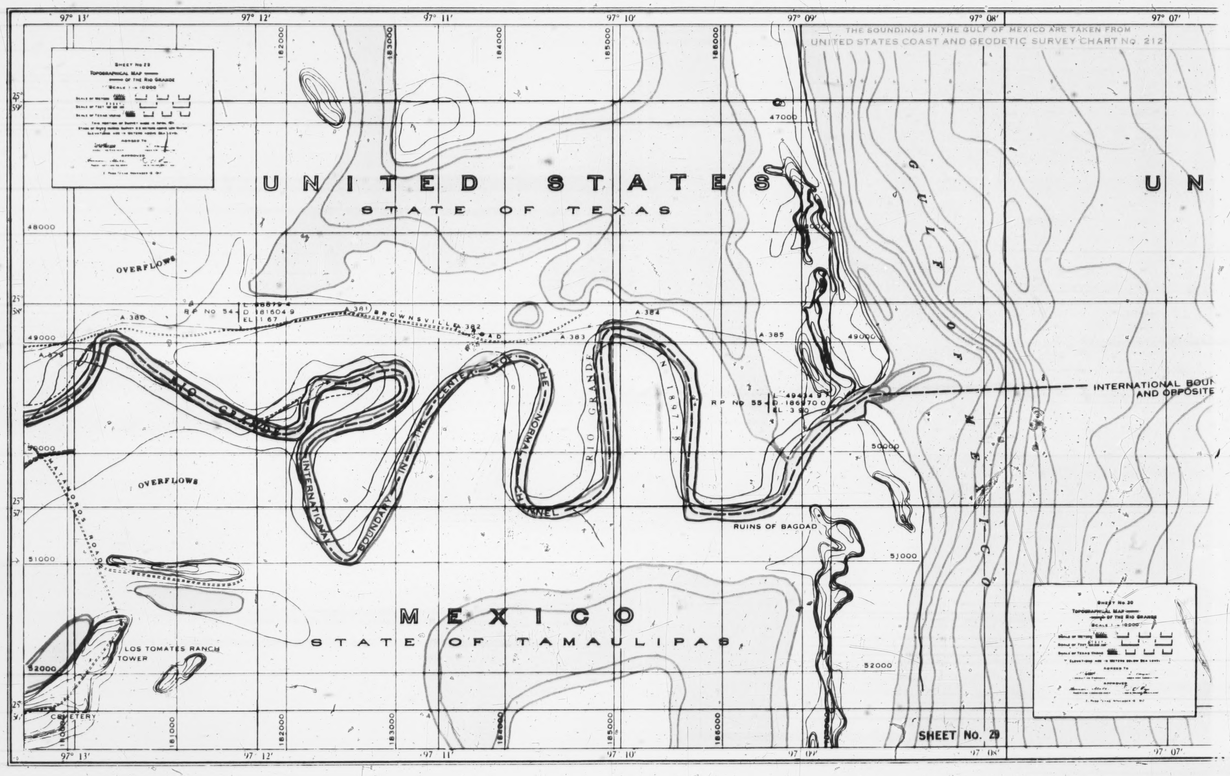
1913).



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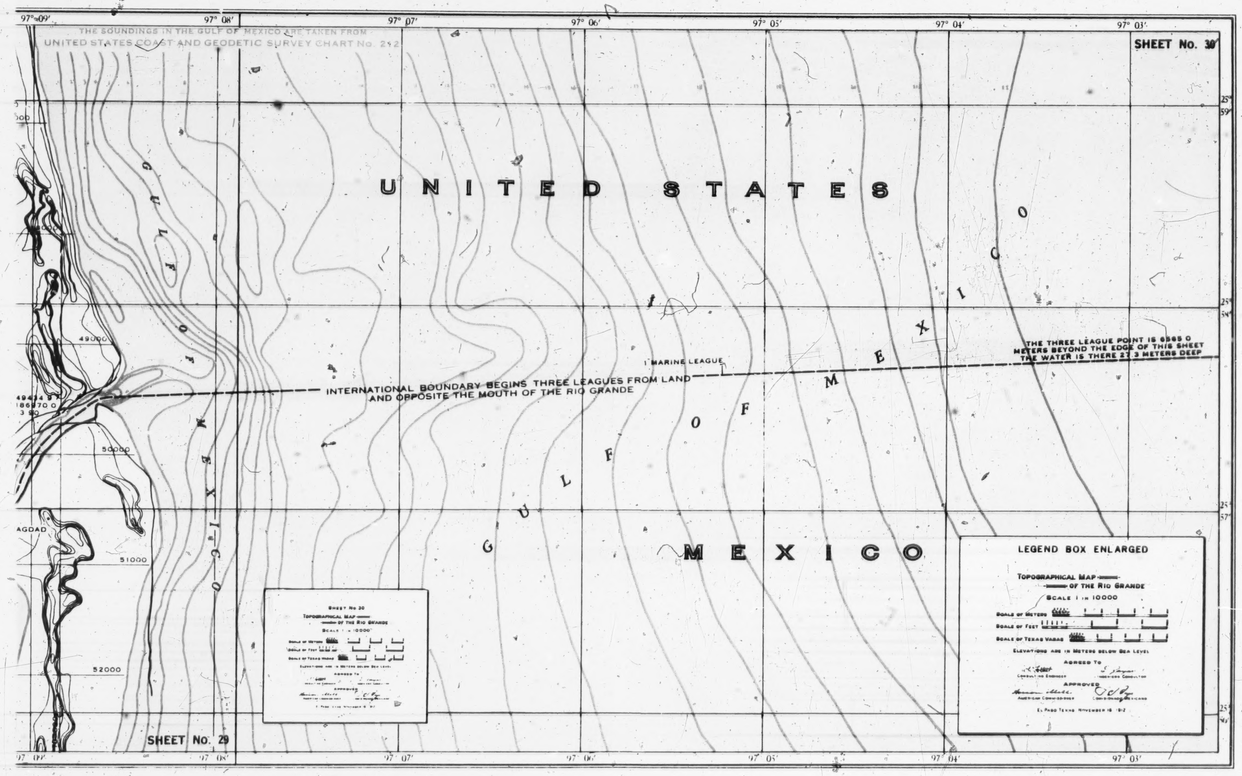

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of State—PROCEEDINGS OF THE INTERNATIONAL BOUNDARY
N, UNITED STATES AND MEXICO—Joint Report of the Consulting
n Field Operations of 1910 1911. American Section" (Department
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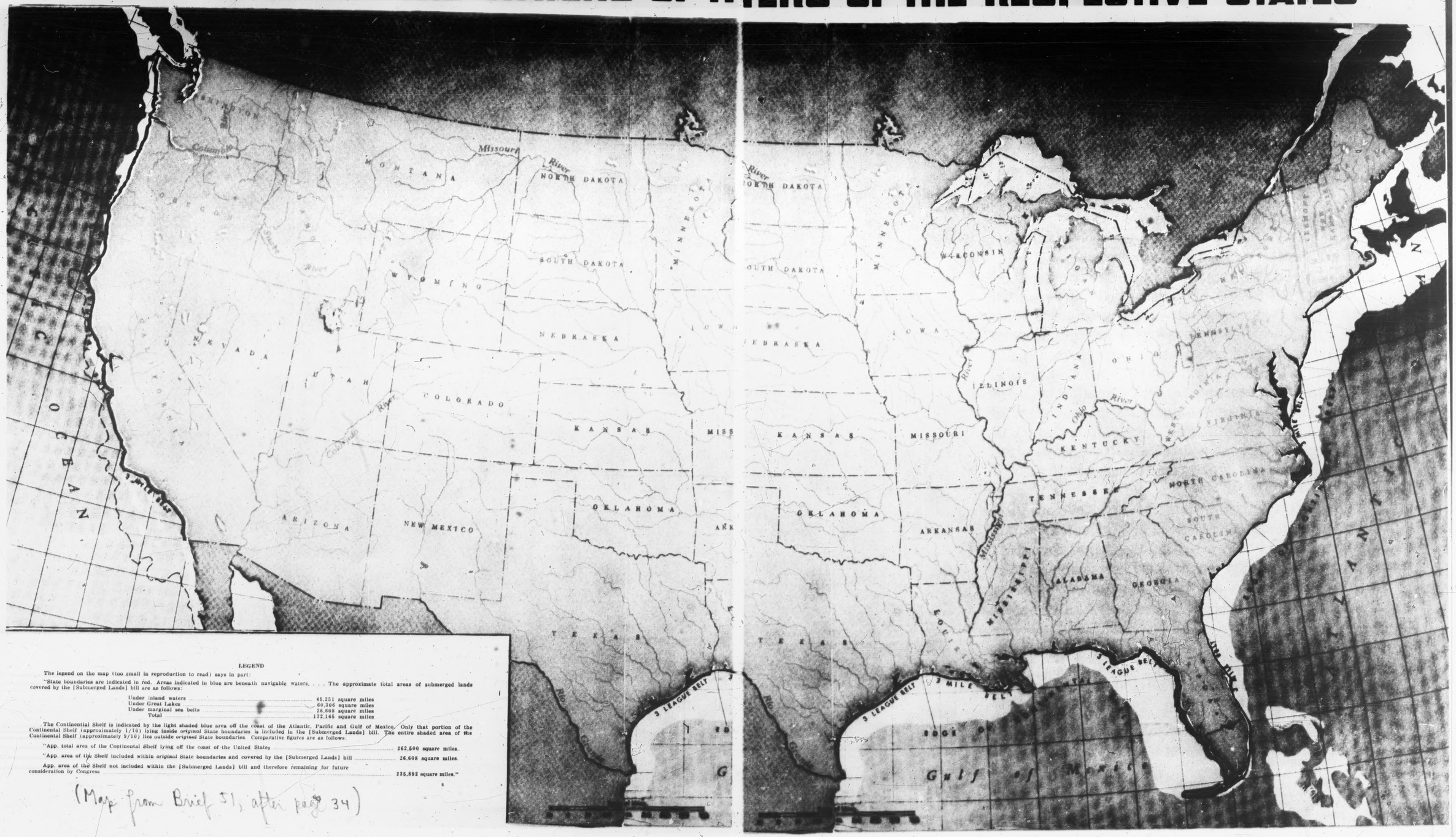
LANDS BENEATH THE WATERS OF THE RESPECTIVE STATES



LEGEND

The legend on the map (too small in reproduction to read) says in part:

"State boundaries are indicated in red. Areas indicated in blue are beneath navigable waters, . . . The approximate total areas of submerged lands covered by the [Submerged Lands] bill are as follows:

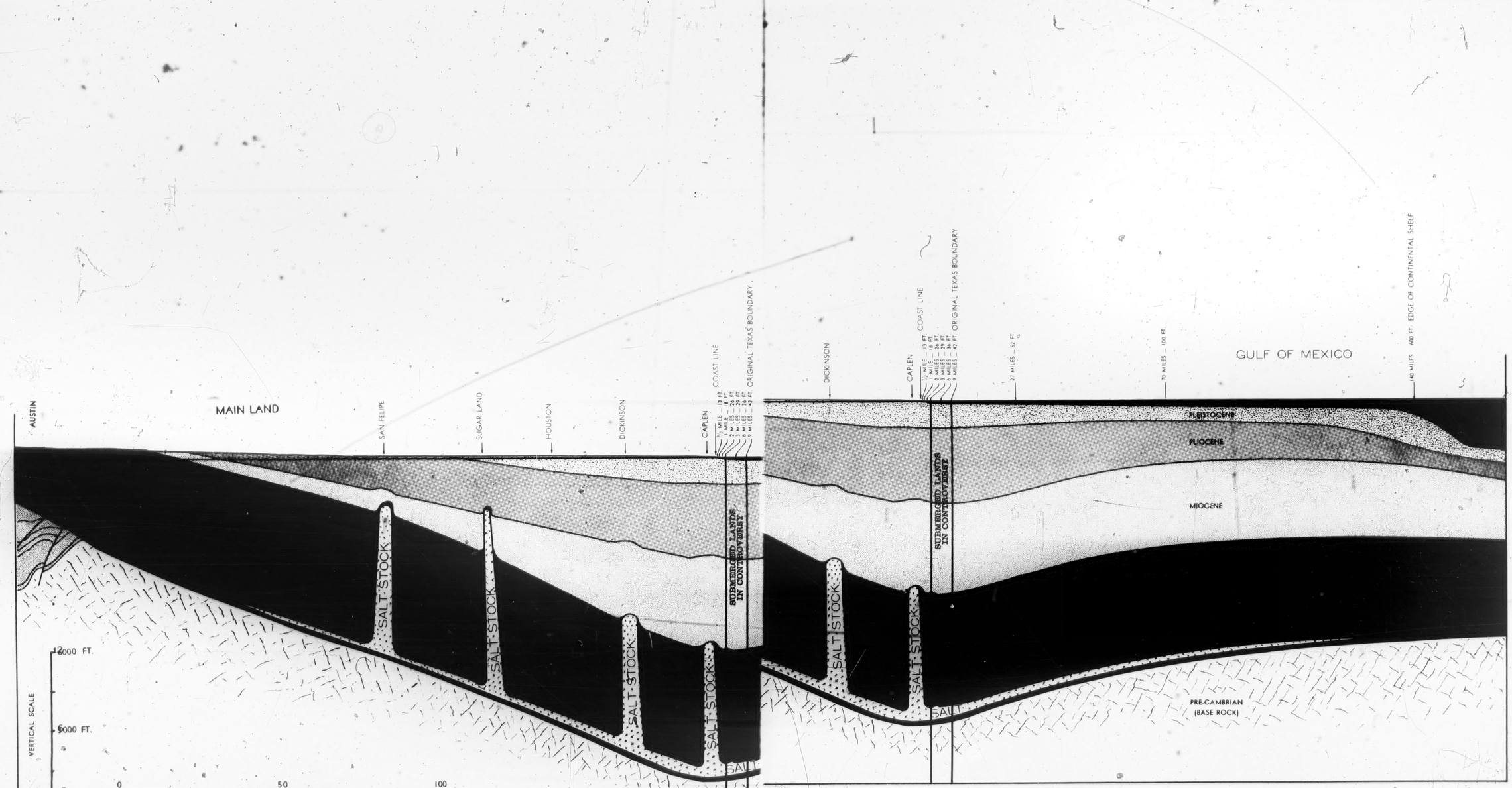
Under inland waters	45,251 square miles
Under Great Lakes	60,306 square miles
Under marginal sea belts	26,608 square miles
Total	132,165 square miles

The Continental Shelf is indicated by the light shaded blue area off the coast of the Atlantic, Pacific and Gulf of Mexico. Only that portion of the Continental Shelf (approximately 1/10) lying inside *original* State boundaries is included in the [Submerged Lands] bill. The entire shaded area of the Continental Shelf (approximately 9/10) lies outside *original* State boundaries. Comparative figures are as follows:

"App. total area of the Continental Shelf lying off the coast of the United States	262,500 square miles.
"App. area of the Shelf included within *original* State boundaries and covered by the [Submerged Lands] bill	26,608 square miles.
App. area of the Shelf not included within the [Submerged Lands] bill and therefore remaining for future consideration by Congress	235,892 square miles."

(Map from Brief 51, after page 34)

Copy of the Map which Remained on the Senate Floor during the Debate on the Submerged Lands Bill and to which Senator Holland Referred



(This sheet follows page 120, of Brief 51)

PROFILE SECTION OF TEXAS MAINLAND AND CO

OF TEXAS MAINLAND AND CONTINENTAL SHELF

V

The allegations of Article V relate to the State of Louisiana but the general import thereof, if directed at the State of Alabama, is denied and intervenor avers that its southern boundary was established by its Constitution when admitted to the United States as six leagues from its shore into the Gulf of Mexico; that prior to the decision of this Honorable Court in United States against California and the Submerged Lands Act and the Outer Continental Shelf Lands Act, its southern boundary was coextensive with the southern boundary of the United States, but if said decision and said statutes have the effect of limiting the southern boundary of the State of Alabama, then pursuant thereto the boundary of the State of Alabama must extend three marine leagues into the Gulf of Mexico from its coast. Further answering said Article V, the State of Alabama says that if its territorial boundary does not extend three marine leagues into the Gulf from its coast, that distance is nevertheless the measure of the area within which the Submerged Lands Act establishes and confirms Alabama's claim to the lands and natural resources within the territorial limits of the United States or appertaining to the United States.

VI

Insofar as the State of Alabama is affected, the allegations of paragraph VI of the complaint are denied.

VII

Article VII of the complaint relates to a specific controversy between the State of Louisiana and the United States, with which specific acts the State of Alabama is not concerned. The State of Alabama admits there is a need to establish the rights of the respective parties and avers that such rights cannot be properly established until the claim of Alabama to all submerged lands and natural resources within three marine leagues from its coast is recognized.

VIII

There is no paragraph having the number VIII in the complaint but the eighth paragraph thereof is numbered IX.

IX

The State of Alabama accedes to the jurisdiction of this Court. The State of Alabama avers, however, that insofar as this is a controversy between the sovereign states of this Union and the Union itself, and inasmuch as the President of the United States and the Congress of the United States, through the Submerged Lands Act and the Outer Continental Shelf Lands Act, have asserted the extent of American territory and have asserted the measure within American territory and the rights appertaining to the American territory in which the states shall participate in the natural resources, the present controversy does not involve anything with which any foreign power can be concerned but is wholly an internal matter.

X

Further answering, the State of Alabama claims that its historic boundary extends into the Gulf of Mexico to a point which is more than three marine leagues from its coast line as more fully hereinafter shown.

WHEREFORE, the State of Alabama reserves the right to plead further herein after the United States amends or supplements its complaint, and the State of Alabama prays that a decree be entered herein decreeing that it is entitled to the lands and natural resources extending three marine leagues into the Gulf of Mexico from its coast and that an appropriate procedure be provided by this Court, whether in this Court or in a court of inferior jurisdiction or by special master, for the purpose of establishing the location of the said coast and a line three marine leagues into the Gulf therefrom.

ARGUMENT

The Supreme Court of the United States, after arguments from interested states presented orally and by briefs from some of the most distinguished lawyers in the world, considered the question of whether a state or the Federal Government had the paramount rights and power to determine in the first instance when, how and by what agencies, foreign or domestic, the oil and other resources of the soil of the marginal sea, known or hereafter discovered, may be exploited.

The court decided the question in **United States v. California,** 332 U.S. 19, as follows:

> "Now that the question is here, we decide for the reasons stated that California is not

the owner of the three mile marginal belt along its coast, and that the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that area, including oil."

In **United States v. Louisiana**, 339 U.S. 699, the court said that the matter of state boundaries had no bearing on the problem of paramount rights in the marginal sea; that it is a national, not a state concern. National interests, national responsibilities, national concerns are involved. The problems of commerce, national defense, relations with other powers, war and peace focus there. National rights must, therefore, be paramount in that area. Ownership twenty-four miles seaward of the three-mile belt was denied.

To like effect was **United States v. Texas**, 339 U.S. 707. where such ownership was denied to Texas in the lands, minerals and other things underlying the Gulf of Mexico, lying seaward of the ordinary low-water mark on the coast of Texas and outside of the inland waters, extending seaward to the outer edge of the continental shelf.

In the **California** and **Louisiana** cases the decrees of the court specifically stated that the interested states were without title to the property in question, for instance in the **Louisiana** case, the decree states, in the first paragraph, that "The State of Louisiana has no title thereto or property interest therein." In the **California** case, the court carefully abstained from recognizing claim of ownership by the United States. This was emphasized when the court struck out the proprietary claim of the United States from the terms

of the decree proposed by the United States. This was pointed out by Mr. Justice Frankfurter in the **Texas** case.

The result is that the states had no title seaward of the ordinary low-water mark. In that area the United States has paramount rights as distinguished from ownership.

Then came the Submerged Lands Act and the **Alabama v. Texas** and **Rhode Island v. Louisiana** cases in which it was contended that these paramount rights could not be granted, or relinquished to the states by Congress. The right of Congress to do so, however, was upheld, the court stating:

> "The power of Congress to dispose of any kind of property belonging to the United States is vested in Congress without limitation."

If these decisions stand as the law of the land, Alabama's ownership or paramount rights seaward from the mean low-water mark must come from the Submerged Lands Act.

What then does Alabama have under the Act?

First: It has title to or paramount rights in and power over all lands, permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast. This the United States concedes.

Second: It has the right to prove that the seaward boundary of Alabama provided by its Constitu-

tion or laws prior to or at the time such state became a member of the union was far enough out in the Gulf of Mexico to embrace three marine leagues into the Gulf from the coast line. In this event, Alabama will own or have the paramount rights in and power over the lands, minerals, natural resources and other resources within this three marine league belt.

Third: It has the right to prove that the State's seaward boundary extends beyond three geographical miles from the coast line, if it was so provided by its Constitution or laws prior to or at the time such state became a member of the union, or if such boundary has been approved by Congress prior to May 22, 1953. In such event, Alabama will own or have the paramount rights in and power over the lands, minerals, natural resources and other resources within the boundary so proven but not more than three marine leagues from the coast line. In other words, Alabama, depending upon proof, could have any given marginal seaward belt between three geographical miles from the coast line and three marine leagues from the coast line.

The United States admits that the states may make this proof but then makes the astounding claim that even if they do it is useless for even then the states can have only three geographical miles from the coast line.

To sustain this contention is to say that Congress deliberately did that which is meaningless, or that a letter from Secretary Dulles takes precedence over the Submerged Lands Act. Both contentions are utterly without merit and clearly untenable.

The claim of the United States, in which Secre-

tary Dulles' letter by inference is mentioned, is stated as follows:

> "Under the Submerged Lands Act, the location of the state boundary is left to be judicially ascertained. We consider it fundamental that the state boundary cannot be further seaward than the national boundary. The location of the national boundary is a political matter, to be determined by the political branches of the government; their determination regarding it is binding upon the courts and is subject to judicial notice. A formal declaration by the Department of State is the most appropriate source of information on this subject, and should be accepted as conclusive. Here, the Secretary of State has specifically declared that the national maritime boundary is and has always been at a distance of three miles, and no more, from the low-water mark and from the outer limit of inland waters along the coasts. The declaration is in accordance with a long line of diplomatic history, including both treaties and international correspondence, extending through the whole time of the nation's existence, and all of which is subject to judicial notice."

Little need be said to dispose of these contentions.

1. Congress is a political body with power and authority to fix boundaries; if the states' boundaries, depending upon proof, are extended three marine leagues from the coast line, then it necessarily follows

that the national boundary is extended also; a state cannot be partly within and partly without the union.

2. The Secretary of State is powerless to nullify an act of Congress.

3. If the contention of the United States is correct, then it must be said that Congress deliberately passed the Submerged Lands Act knowing that it was meaningless as to state ownership up to three marine leagues from the coast line.

4. The rights, which Congress granted to the states, are paramount rights which are extraterritorial in nature; state boundaries are important only to determine the extent of those rights into the Gulf of Mexico.

5. The United States has rights seaward beyond its boundaries and Congress invested the states with those rights not exceeding three marine leagues, upon proper proof as provided in the Submerged Lands Act.

6. Congress has authority to grant rights to the states, under waters beyond the national maritime boundary.

7. The Submerged Lands Act should be given application as provided by Congress and not application as provided by the Secretary of State.

It is respectfully submitted, therefore, that for some one or more of the above reasons, the contentions of the United States are legally unsound and should be rejected.

HISTORICAL BOUNDARIES

What are the historical boundaries of Alabama? Before admission to the union, Alabama was a territory established by an Act of Congress, dated March 3, 1817. 3 U. S. Statutes at Large, page 371.

In pertinent part, it provided the following:

> "That all that part of the Mississippi territory which lies within the following boundaries, to-wit: beginning at the point where the line of the thirty-first degree of north latitude intersects the Perdido River, thence east to the western boundary line of the State of Georgia, thence along said line to the southern boundary line to the State of Tennessee, thence west along said boundary line to the Tennessee River, thence up the same to the mouth of Bear Creek, thence by a direct line to the northwest corner of Washington County, thence due south to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore, to the Perdido River, and thence up the same to the beginning, shall for the purpose of a temporary government, constitute a separate territory, and be called 'Alabama.' "

The above description was subsequently changed, as authorized by the Enabling Act for the admission of Alabama into the union, to provide a line from the northwest corner of Washington County "southwardly, along the line of the State of Mississippi to the Gulf of Mexico." 3 U.S. Statutes at Large, page 489. This

was done to avoid encroachment on the counties of Wayne, Greene and Jackson in the State of Mississippi.

The Enabling Act used the same description as the Act establishing Alabama as a territory and Alabama was admitted to the union by resolution of Congress approved December 14, 1819. 3 U.S. Statutes at Large, page 608. After the change in the southern boundary line as aforesaid, the following description of the boundaries of Alabama appeared in every Constitution of Alabama, including Section 37, Constitution of Alabama 1901:

> "The boundaries of this state are established and declared to be as follows, that is to say: Beginning at the point where the thirty-first degree of north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington county, in this state, as originally formed; thence southwardly, along the line of the State of Mississippi, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; . . ."

On the 2nd day of March, 1867 (14 Stat. 428), an act was passed by Congress entitled, "An Act to provide for the more efficient Government of the Rebel

States." The Act declared that in these states, of which Alabama was one, there was no adequate protection for life or property; that it was for the federal government to enforce law and order until such time as state government could be established. These rebel states were divided into military districts and the President authorized to appoint military directors; these directors, or Governors, to have charge of their respective districts. These states were deprived of their representation in Congress until a proper state Constitution was adopted; that upon its approval by Congress, and upon the states' adoption of the Fourteenth Amendment to the Federal Constitution, they would be entitled to representation.

On March 23, 1867 (15 Stat. 2), the Congress passed an act entitled, "An Act supplementary to an Act entitled 'An Act to provide for the more efficient Government of the Rebel States,' passed March second, eighteen hundred and sixty-seven, and to facilitate Restoration."

This supplemental act required these states to adopt a state Constitution in conformity with the terms of the act; that after the state Constitution had been adopted by the Convention and ratified by the people, a copy should be sent to Congress, and, if the Congress approved, the state be declared entitled to representation, and her Representatives and Senators admitted to Congress.

On June 25, 1868 (15 Stat. 73), Congress passed an act entitled, "An Act to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, to Representation in Congress." This act recited that these states had adopted Consti-

tutions in accordance with the Act of March 2, 1867. **Pope v. Blanton,** 10 F. Supp. 18.

The Supreme Court of Alabama, in **Irwin v. Mayor, Etc., of Mobile,** 57 Ala. 6, said:

> "What is known as the Constitution of 1868, did not become the Constitution of Alabama, or binding upon its citizens, until the same was approved by Congress. On the 25th day of June, 1868, the Congress of the United States, by the requisite majorities, passed over the veto of the President, the 'act to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, to representation in Congress.' The preamble to said act recites that the people of said States had 'framed constitutions of State government which are republican, and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same.' See 15 Stat. at Large, 73-4.
>
> "Prior to the passage of that act by Congress, it had been held by the officers in charge of the election and its returns, that the said constitution had not been adopted by the votes of the people of Alabama. Hence, we affirm that said constitution became operative and obligatory in Alabama, only on the 25th day of June, 1868."

The Constitution of Alabama, which was approved by Congress and which became operative and obligatory in Alabama on the 25th day of June, 1868,

contained, in pertinent part, the same description as the Enabling Act and all other Constitutions of the State of Alabama, namely "thence eastwardly, including all islands within six leagues of the shore, to the Perdido river."

Thus, before admission to the union, at the time of admission to the union, and subsequent to admission to the union, Congress has approved Alabama's southern boundary as including all islands within six leagues of the shore.

We are then brought to the construction or interpretation of what is meant by "including all islands within six leagues of the shore."

The Legislature of Alabama, by Act No. 77, General and Local Acts 1956, page 111, construed the above historical boundary of Alabama by providing, in pertinent part, as follows:

> "The Director of Conservation, on behalf of the State, is hereby authorized to lease, upon such terms as he may approve, any lands or any right or any interest therein under any navigable streams or navigable waters, bays, estuaries, lagoons, bayous or lakes, and the shores along any navigable waters to high tide mark, and submerged lands in the Gulf of Mexico **within the historic seaward boundary of this State, which is hereby declared to extend seaward six leagues from the land bordering the Gulf,** for the exploration, development and production of oil, gas and other minerals, or any one or more of them, on, in and under such lands; and such lands or interests therein for

such purposes shall be supervised and managed by the Department of Conservation." (Emphasis supplied)

This Declaration by the Legislature of Alabama was not an extension of the State's historical boundaries, but was instead its construction of what the description, describing the southern boundary of Alabama meant.

This is true also as to Act No. 158, General and Local Acts of Alabama 1956, page 24, wherein the historical seaward boundary of Alabama is declared to extend seaward six leagues from the land bordering the Gulf.

It is not necessary to determine in this suit whether the boundary is to be measured from the "land bordering the Gulf" as declared by the Legislature of Alabama, or from "the shore" as contained in all of Alabama's Constitutions, if indeed there is any difference in meaning in the language used. If there is a difference, six leagues seaward from either starting point will be sufficiently far distant to embrace three marine leagues from the coast line as provided in the Submerged Lands Act.

It is anticipated that the United States will claim in this case that "including all islands within six leagues of the shore," means the islands only and does not include all waters and submerged lands within six leagues of the shore. Congress was perfectly familiar with the **California, Louisiana** and **Texas** cases when it passed the Submerged Lands Act. It is only necessary, under that Act, to show that the states' boundaries extended seaward suffi-

ciently far distant to embrace three marine leagues from the coast line. When the extent of the boundaries is thus shown, the Submerged Lands Act itself releases and relinquishes to the interested states title to and ownership of the lands beneath navigable waters within the states' boundaries, and the natural resources within such lands and waters, up to three marine leagues.

Under the ruling in the **Texas** case, it was Alabama's entry into the union, on equal footing with other states, that caused the loss of title to and ownership of the lands beneath navigable waters within six leagues of the shore. Alabama had such ownership as a territory and even if it is necessary to prove ownership of the submerged lands within six leagues of shore, that burden is met by showing the description of Alabama's southern boundary as a territory. Section 4 of the Submerged Lands Act provides for proof of a seaward boundary beyond three geographical miles, if it was so provided by a state's constitution or laws **prior to** as well as at the time of entry into the union.

No one has yet suggested, however, why Congress should think that islands six leagues from shore should be part of the territory belonging to Alabama, but the submerged lands connecting the islands with the mainland should not.

If the great right of dominion and ownership in this submerged land were to have been severed from the sovereignty, and withheld from Alabama, such should have been clearly indicated by appropriate terms; and would not have been left for inference from ambiguous language. **Martin v. the Lessee of Waddell,** 16 Pet. 367, 413-17. 10 L. Ed. 997, 1014-15; **Pollard**

v. Hagan, 44 U.S., 3 How. 212, 11 L. Ed. 565; **Massachusetts v. New York**, 271 U.S. 65, 89, 70 L. Ed. 838, 849. Certainly some measure of sovereignty belongs to Alabama as a territory. **People of Porta Rica v. Rosaly y Castillo**, 227 U.S. 270; **Kawananakoa v. Polyblank**, 205 U.S. 349, 352.

In **Mahler v. Transportation Company**, 35 N. Y. Reports, page 352, the question presented and its answer is stated as follows:

> "The question whether the injury to the intestate was committed within our jurisdiction, depends on the course of the New York boundary line from Fisher's Island to Lyon's Point. The court below held that this line must be so run as to exclude the waters of the sound below low water mark. The statute defining the boundaries of the State does not indicate the course of the line from Sandy Hook to Lyon's Point, otherwise than by declaring that it is to be run 'in such manner as to include Staten Island and the islands of meadow on the west side thereof, Shooter's Island, Long Island, the Isle of Wight (now called Gardiner's Island), Fisher's Island, Shelter Island, Plumb Island, Robin's Island, Ram Island, the Gull Islands, and all the islands and waters in the bay of New York and within the bounds above described.' (1 R. S., 65.)
>
> "It seems quite obvious that a direction, so to run the line as to include the islands within the bounds of the State, is not a direction

so to run it as to exclude the intermediate waters. . . .

"The description purports to define the exterior lines of a continuous territorial domain; and not to declare the respective boundaries of detached and separate tracts, divided from each other by the ocean, and connected only by the bonds of political union.

"Every intendment, therefore, is in favor of the natural and obvious construction, that the lines indicated constitute a continuous boundary, at no point diverging from our possessions, to traverse other lands or waters which we do not ow...

To like effect is the statement contained in 81 C. J. S., States, Section 18, page 914:

". . . Where a state line is described to run so as to include all of the islands in a body of water, such a description is not a direction so to run it as to exclude the intermediate waters; the boundary is not to be determined by running the boundary along the coastline at low-water mark until it reaches points opposite the several islands and thence running lines to and around such islands and returning along the same lines to the points of departure from the low-water mark, excluding all the water between the islands, and between them and the low-water mark on the opposite coastline; rather the line is to be a continuous line inclosing all of the specified islands without traversing lands or waters

not included in the territorial limits of the state."

The description of Alabama's southern boundary does not designate the islands by name but includes all within six leagues of shore. The proper and only reasonable conclusion, therefore, is that the line runs southwardly along the line of the State of Mississippi to a point in the Gulf of Mexico six leagues from shore and thence eastwardly six leagues from and parallel to the shore to a point where said line intersects an extension of the Perdido River into the Gulf of Mexico, thence northwardly along the Perdido River extended to the point of beginning. All islands within this boundary are owned by the State of Alabama.

That such description is correct is given support by Louisiana's contention in **Louisiana v. Mississippi,** 202 U.S. 1; by Mississippi's contention in the same case and by the opinion of the court.

Louisiana contended that the southern boundary of Mississippi would start "westward from a point 18 miles south of the coast line," and Mississippi, that she was given by Act of Congress, approved March 1, 1817, "all lands under the waters south of her well-defined shore line to the distance of six leagues from said shore at every point between the Alabama line and the most eastern junction of Pearl river with Lake Borgue, including all islands within said limit."

The pertinent part of the Court's opinion is as follows:

"The maps show that there is a chain, not of

alluvial, but of sea-sand islands, running from the west shore of Mobile bay, in the state of Alabama, westward to and inclusive of Cat island, in the state of Mississippi. This chain forms the southern boundary of Mississippi sound, and the islands are all relatively the same distance from the shore of the states of Mississippi and of Alabama. They, beginning at the eastern end, are Dauphin, Petit Bois, Horn, Ship, and Cat islands, and there are some other islands lying within this chain. If Congress referred to these islands as being thus within 6 leagues of the shore, when the act creating the state of Mississippi was passed, it follows that there would be no conflict with prior existing boundaries of the state of Louisiana, particularly if the deep-water sailing channel line be taken as the correct boundary between the states. And when Congress created a separate territorial government for the eastern part of Mississippi territory and called it Alabama, by the act of March 3, 1817 (3 Stat. at L. 372, Chap. 59), it used the same language concerning the western and southern boundary of the territory: 'Thence due south to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore to the Perdido river and thence up same to the beginning.' It seems obvious to us that it was to this chain of islands that Congress referred when it admitted Mississippi into the Union, and that it had no intention whatsoever of giving Mississippi any claim of ownership in the sea-marsh islands,

> which had been previously granted to the State of Louisiana."

Some reference has been made to the case of **Bosarge, et al. v. State,** 23 Ala. App. 18, 121 So. 427, in which the Court of Appeals of Alabama stated the following:

> "We think, and hold, that since Dauphine Island is admittedly one of the 'islands within six leagues of the shore,' referred to in the above description, and since there is no other such island lying south of Dauphine Island, necessarily the southern boundary line, or coast line, of Dauphine Island became the southern boundary line of Alabama."

This case was a criminal case in which Bosarge, a resident of Alabama, was convicted of catching or attempting to catch salt water shrimp within the waters of the State of Alabama, or those subject to the territorial jurisdiction of the State, by the use of a seine, etc. The above quoted part of the decision of the Court of Appeals was wholly unnecessary to a decision of the case because the statute, alleged to have been violated, was within the police power of the state; whether the place where the act was committed was within its boundaries or not was immaterial. **Skiriotes v. Florida,** 313 U.S. 69. Besides not being a decision by the highest court of Alabama, the Court of Appeals was in error, as the United States well knows, in stating that there was no other island lying south of Dauphine Island.

CONCLUSION

Alabama does not present herewith the supporting evidence and data relative to its claim. This cannot be properly done within sixty days from June 24, 1957. If the Court, however, deems such supporting proof to be proper, Alabama requests full opportunity to present the same to the Court.

Alabama contends, however, that from the descriptions alone of the southern boundaries of the various states; namely, Texas, Louisiana, Mississippi, Alabama and Florida; that each is entitled, under the Submerged Lands Act, to three marine leagues from its coast line.

Respectfully submitted,
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NEIL METCALF
Representing James E.
Folsom, Governor of
Alabama
Of Counsel

PROOF OF SERVICE

I, John Patterson, Attorney General of Alabama, certify that on the ..... day of August 1957, I mailed copies of the foregoing petition of intervention and brief in support thereof to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Texas, Louisiana, Mississippi and Florida.

JOHN PATTERSON
Attorney General of Alabama

APPENDIX

1. SUBMERGED LANDS ACT OF MAY 22, 1953

67 Stat. 29, 43 U.S.C. 1301, et seq.

Title 1, Sec. 2, 43 U.S.C. 1301 (a) (2), (b), (c), (e):

When used in this chapter

(a) The term "lands beneath navigable waters" means—

(2) All lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(b) The term "boundaries" includes the seaward boundaries of a State or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress, or as extended or confirmed pursuant to section 1303 of this title but in no event shall the term "boundaries" or the term "lands beneath navigable waters" be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or the Pacific Ocean, or more than three marine leagues into the Gulf of Mexico;

(c) The term "coast line" means the line of ordinary low water along that portion of the coast which

is in direct contact with the open sea and the line marking the seaward limit of inland waters;

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas, and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp, and other marine animal and plant life but does not include water power, or the use of water for the production of power;

Title II Sec. 3, 43 U.S.C. 1311:

(b) (1) The United States releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title, and interest of the United States, if any it has, in and to all said lands, improvements, and natural resources;

Title II. Sec. 4, 43 U.S.C. 1312:

§ 1312. Seaward boundaries of States

The seaward boundary of each original coastal State is approved and confirmed as a line three geographical miles distant from its coast line or, in the case of the Great Lakes, to the international boundary. Any State admitted subsequent to the formation of the Union which has not already done so may extend its seaward boundaries to a line three geographical miles distant from its coast line, or to the international boundaries of the United States in the Great Lakes or any other body of water traversed by such boundaries. Any claim heretofore or hereafter asserted either by constitutional provision, statute, or otherwise, indicating the intent of a State so to extend its boundaries is approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend

beyond that line. Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any State's seaward boundary beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the Union, or if it has been heretofore approved by Congress. May 22, 1953, c. 65, Title II, §4, 67 Stat. 31.

2. OUTER CONTINENTAL SHELF LANDS ACT OF AUGUST 7, 1953

67 Stat. 462, 43 U.S.C. 1331, et seq.

Sec. 2, 43 U.S.C. 1331 (a):

When used in this subchapter—

(a) The term "outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of this title, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

Sec. 3, 43 U.S.C. 1332:

§ 1332. Congressional declaration of policy; jurisdiction; construction

(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter.

(b) This subchapter shall be construed in such manner that the character as high seas of the waters

above the outer Continental Shelf and the right to navigation and fishing therein shall not be affected. Aug. 7, 1953, c. 345; § 3, 67 Stat. 462.

Sec. 4 (a) (1) 43 U.S.C. 1333;

§ 1333. Laws and regulations governing lands—Constitution and United States laws; laws of adjacent States; Publication of projected State lines; restrictions on State taxation and jurisdiction.

(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: Provided, however, that mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

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No. 11 Original

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

AMENDED COMPLAINT AND STATEMENT WITH RESPECT TO AMENDED COMPLAINT

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

AMENDED COMPLAINT

Pursuant to the leave of the Court granted by its order of June 24, 1957, as amended by the order of October 22, 1957, the United States of America, by its Solicitor General, brings this suit against the defendants, the States of Louisiana, Texas, Mississippi, Alabama and Florida, and for its causes of action states:

FIRST CAUSE OF ACTION

(Against the State of Louisiana)

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States, and Title 28, United States Code, Section 1251 (b) (2).

446975—57——1

II

On June 5, 1950, the United States was and, except as set forth in Paragraph IV hereof, has ever since been and now is entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, extending seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana to the edge of the continental shelf; and the State of Louisiana did not have on June 5, 1950, and, except as set forth in Paragraph IV hereof, has never since had and does not now have any title thereto or property interest therein.

III

On December 11, 1950, in the case of *United States* v. *Louisiana*, 340 U. S. 899, this Court entered its decree enjoining the State of Louisiana from taking or removing any petroleum, gas, or other valuable mineral products from the lands underlying the Gulf of Mexico, extending seaward twenty-seven marine miles from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana, and enjoining the State from carrying on any activities for that purpose upon or in that area, except upon authorization of the United States, and directing the State of Louisiana to account to the United States for all sums derived by the State from that area after June 5, 1950, which were properly owing to the United States under that decree, the opinion entered by this Court in that case on June 5, 1950, 339 U. S. 699, and applicable principles of law.

IV

On May 22, 1953, by Public Law 31 of the 83rd Congress, known as the Submerged Lands Act, 67 Statutes at Large 29, the United States granted to the State of Louisiana the title to and ownership of the submerged lands and natural resources lying in the Gulf of Mexico within the boundaries of said State, but not extending seaward more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters unless the boundary of said State as it existed when the State became a member of the Union, or as approved by Congress, extended more than three geographic miles therefrom, and not extending seaward more than three marine leagues therefrom in any event; and by said Act the United States released its claim for money or damages arising out of any operations by the State of Louisiana or under its authority in the area so granted.

V

When the State of Louisiana became a member of the Union its boundary did not extend into the Gulf of Mexico more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters, and the Congress of the United States has never approved a boundary for said State extending into the Gulf of Mexico more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters.

VI

By reason of the foregoing, the United States is now entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana, extending seaward to the edge of the continental shelf, and is entitled to an accounting for all sums of money derived by the State of Louisiana after June 5, 1950, from the area lying more than three, and less than twenty-seven, geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana, which are properly owing to the United States under the decree entered by this Court on December 11, 1950, in the case of *United States* v. *Louisiana,* 340 U. S. 899.

VII

The State of Louisiana claims some right, title or interest adverse to the United States in the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana, has invited bids for leases of submerged lands within said area, has threatened to bring suits against lessees of the United States to enjoin them from operating therein, and has not accounted to the United States for all or any sums of money derived after June 5, 1950, from the area lying more than three, and less

than twenty-seven, geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Louisiana.

VIII

There is urgent need for exploration and development of the mineral resources of the area described in Paragraph VI hereof. On August 7, 1953, by Public Law 212 of the 83rd Congress, known as the Outer Continental Shelf Lands Act, 67 Statutes at Large 462, Congress declared the existence of such need and provided that it should be met by the issuance of mineral leases in that area by the Secretary of the Interior to private operators. The Secretary of the Interior has issued such leases of tracts in the area in dispute, and is desirous of continuing to do so. By its conduct described in Paragraph VII hereof the State of Louisiana has interfered with and obstructed, and is interfering with and obstructing, the orderly and effective exploration, leasing, and development of said mineral resources, and will continue to do so and will thereby cause great and irreparable injury to the United States unless the rights of the United States are declared and established by this Court. The United States has no other adequate remedy.

IX

The original jurisdiction of this Court is invoked because there is urgent need for prompt and final settlement of the controversy, and because the fundamental question in issue is the width of the marginal

sea within the jurisdiction of the United States, which involves inquiry into and application of the foreign policy of the United States in a matter of peculiar importance and delicacy and is most appropriately a subject for original adjudication by this Court.

SECOND CAUSE OF ACTION

(Against the State of Texas)

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States, Title 28, United States Code, Section 1251 (b) (2), and this Court's order entered in this case on June 24, 1957.

II

On June 5, 1950, the United States was and, except as set forth in Paragraph IV hereof, has ever since been and now is entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, extending seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Texas to the edge of the continental shelf; and the State of Texas did not have on June 5, 1950, and, except as set forth in Paragraph IV hereof, has never since had and does not now have any title thereto or property interest therein.

III

On December 11, 1950, in the case of *United States* v. *Texas*, 340 U. S. 900, this Court entered its decree enjoining the State of Texas from taking or removing any petroleum, gas, or other valuable mineral products from the lands underlying the Gulf of Mexico, extending seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Texas to the outer edge of the continental shelf, and enjoining the State from carrying on any activities for that purpose upon or in that area, except upon authorization of the United States, and directing the State of Texas to account to the United States for all sums derived by the State from that area after June 5, 1950, which were properly owing to the United States under that decree, the opinion entered by this Court in that case on June 5, 1950, 339 U. S. 707, and applicable principles of law.

IV

On May 22, 1953, by Public Law 31 of the 83rd Congress, known as the Submerged Lands Act, 67 Statutes at Large 29, the United States granted to the State of Texas the title to and ownership of the submerged lands and natural resources lying in the Gulf of Mexico within the boundaries of said State, but not extending seaward more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters unless the boundary of

said State as it existed when the State became a member of the Union, or as approved by Congress, extended more than three geographic miles therefrom, and not extending seaward more than three marine leagues therefrom in any event; and by said Act the United States released its claim for money or damages arising out of any operations by the State of Texas or under its authority in the area so granted.

V

When the State of Texas became a member of the Union its boundary did not extend into the Gulf of Mexico more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters, and the Congress of the United States has never approved a boundary for said State extending into the Gulf of Mexico more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters.

VI

By reason of the foregoing, the United States is now entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland water on the coast of Texas, extending seaward to the edge of the continental shelf, and is entitled

to an accounting for all sums of money derived therefrom by the State of Texas after June 5, 1950, which are properly owing to the United States under the decree entered by this Court on December 11, 1950, in the case of *United States* v. *Texas,* 340 U. S. 900.

VII

The State of Texas claims some right, title or interest adverse to the United States in the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Texas, and has not accounted to the United States for all or any sums of money derived therefrom after June 5, 1950.

VIII

The original jurisdiction of this Court is invoked because the Court, after consideration of representations of the State of Texas as *amicus curiae,* by its order of June 24, 1957, declared that the issues in the First Cause of Action are so related to the possible interests of Texas in the subject matter of the suit that the just, orderly and effective determination of such issues requires that they be adjudicated in a proceeding in which all the interested parties are before the Court. The Court by said order allowed Texas 60 days within which to intervene and, if it failed to do so, allowed the United States 60 days thereafter within which to add Texas as a party. Texas has not intervened, and the 60 days allowed it for doing so have expired.

446975—57——2

Third Cause of Action

(Against the State of Mississippi)

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States, Title 28, United States Code, Section 1251 (b) (2), and this Court's order entered in this case on June 24, 1957.

II

On June 5, 1950, the United States was and, except as set forth in Paragraph III hereof, has ever since been and now is entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, extending seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Mississippi to the edge of the continental shelf; and the State of Mississippi did not have on June 5, 1950, and, except as set forth in Paragraph III hereof, has never since had and does not now have any title thereto or property interest therein.

III

On May 22, 1953, by Public Law 31 of the 83rd Congress, known as the Submerged Lands Act, 67 Statutes at Large 29, the United States granted to the State of Mississippi the title to and ownership of the submerged lands and natural resources lying in the Gulf of Mexico within the boundaries of said State, but not extending seaward more than three geographic miles from the ordinary low-water mark or from the outer

limit of inland waters unless the boundary of said State as it existed when the State became a member of the Union, or as approved by Congress, extended more than three geographic miles therefrom, and not extending seaward more than three marine leagues therefrom in any event; and by said Act the United States released its claim for money or damages arising out of any operations by the State of Mississippi or under its authority in the area so granted.

IV

When the State of Mississippi became a member of the Union its boundary did not extend into the Gulf of Mexico more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters, and the Congress of the United States has never approved a boundary for said State extending into the Gulf of Mexico more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters.

V

By reason of the foregoing, the United States is now entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Mississippi, extending seaward to the edge of the continental shelf, and is entitled to an accounting for all sums of money derived therefrom by the State of Mississippi after June 5, 1950.

VI

The State of Mississippi claims some right, title or interest adverse to the United States in the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Mississippi, and has not accounted to the United States for all or any sums of money derived therefrom after June 5, 1950.

VII

The original jurisdiction of this Court is invoked because the Court by its order of June 24, 1957, declared that the issues in the First Cause of Action are so related to the possible interests of Mississippi in the subject matter of the suit that the just, orderly and effective determination of such issues requires that they be adjudicated in a proceeding in which all the interested parties are before the Court. The Court by said order allowed Mississippi 60 days within which to intervene and, if it failed to do so, allowed the United States 60 days thereafter within which to add Mississippi as a party. Mississippi has not intervened, and the 60 days allowed it for doing so have expired.

FOURTH CAUSE OF ACTION

(Against the State of Alabama)

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of

the United States, Title 28, United States Code, Section 1251 (b) (2), and this Court's order entered in this case on June 24, 1957.

II

On June 5, 1950, the United States was and, except as set forth in Paragraph III hereof, has ever since been and now is entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, extending seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Alabama to the edge of the continental shelf; and the State of Alabama did not have on June 5, 1950, and, except as set forth in Paragraph III hereof, has never since had and does not now have any title thereto or property interest therein.

III

On May 22, 1953, by Public Law 31 of the 83rd Congress, known as the Submerged Lands Act, 67 Statutes at Large 29, the United States granted to the State of Alabama the title to and ownership of the submerged lands and natural resources lying in the Gulf of Mexico within the boundaries of said State, but not extending seaward more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters unless the boundary of said State as it existed when the State became a member of the Union, or as approved by Congress, extended more than three geographic miles therefrom, and not extending seaward more than three marine

leagues therefrom in any event; and by said Act the United States released its claim for money or damages arising out of any operations by the State of Alabama or under its authority in the area so granted.

IV

When the State of Alabama became a member of the Union its boundary did not extend into the Gulf of Mexico more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters, and the Congress of the United States has never approved a boundary for said State extending into the Gulf of Mexico more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters.

V

By reason of the foregoing, the United States is now entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Alabama, extending seaward to the edge of the continental shelf, and is entitled to an accounting for all sums of money derived therefrom by the State of Alabama after June 5, 1950.

VI

The State of Alabama claims some right, title or interest adverse to the United States in the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Alabama, and has not accounted to the United States for all or any sums of money derived therefrom after June 5, 1950.

VII

The original jurisdiction of this Court is invoked because the Court by its order of June 24, 1957, declared that the issues in the First Cause of Action are so related to the possible interests of Alabama in the subject matter of the suit that the just, orderly and effective determination of such issues requires that they be adjudicated in a proceeding in which all the interested parties are before the Court. The Court by said order allowed Alabama 60 days within which to intervene and, if it failed to do so, allowed the United States 60 days thereafter within which to add Alabama as a party. Although Alabama has intervened pursuant to said order, this amendment to the original complaint is necessary in order that the claim and the subject matter of the claim of the United States against Alabama may properly be before the Court.

Fifth Cause of Action

(Against the State of Florida)

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States, Title 28, United States Code, Section 1251 (b) (2), and this Court's order entered in this case on June 24, 1957.

II

On June 5, 1950, the United States was and, except as set forth in Paragraph III hereof, has ever since been and now is entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, Straits of Florida and Atlantic Ocean, extending seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Florida to the edge of the continental shelf; and the State of Florida did not have on June 5, 1950, and, except as set forth in Paragraph III hereof, has never since had and does not now have any title thereto or property interest therein.

III

On May 22, 1953, by Public Law 31 of the 83rd Congress, known as the Submerged Lands Act, 67 Statutes at Large 29, the United States granted to the State of Florida the title to and ownership of the submerged lands and natural resources lying in the Gulf of Mexico, Straits of Florida and Atlantic

Ocean within the boundaries of said State, but not extending seaward more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters unless the boundary of said State as it existed when the State became a member of the Union, or as approved by Congress, extended more than three geographic miles therefrom into the Gulf of Mexico, and not extending seaward more than three marine leagues therefrom into the Gulf of Mexico in any event; and by said Act the United States released its claim for money or damages arising out of any operations by the State of Florida or under its authority in the area so granted.

IV

When the State of Florida became a member of the Union its boundary did not extend into the Gulf of Mexico, Straits of Florida or Atlantic Ocean more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters, and the Congress of the United States has never approved a boundary for said State extending into the Gulf of Mexico, Straits of Florida or Atlantic Ocean more than three geographic miles from the ordinary low-water mark or from the outer limit of inland waters.

V

By reason of the foregoing, the United States is now entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, Straits of Florida and Atlantic Ocean, lying more than three geographic

miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Florida, extending seaward to the edge of the continental shelf, and is entitled to an accounting for all sums of money derived therefrom by the State of Florida after June 5, 1950.

VI

The State of Florida claims some right, title or interest adverse to the United States in the lands, minerals and other things underlying the Gulf of Mexico, Straits of Florida and Atlantic Ocean, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Florida, and has not accounted to the United States for all or any sums of money derived therefrom after June 5, 1950.

VII

The original jurisdiction of this Court is invoked because the Court by its order of June 24, 1957, declared that the issues in the First Cause of Action are so related to the possible interests of Florida in the subject matter of the suit that the just, orderly and effective determination of such issues requires that they be adjudicated in a proceeding in which all the interested parties are before the Court. The Court by said order allowed Florida 60 days within which to intervene and, if it failed to do so, allowed the United States 60 days thereafter within which to add Florida as a party. Florida has not intervened, and the 60 days allowed it for doing so have expired.

WHEREFORE, the United States prays that the defendants be required to answer this amended complaint within 30 days and that a decree be entered declaring the rights of the United States as against said States in the lands, minerals and other things underlying the Gulf of Mexico, Straits of Florida and Atlantic Ocean, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on their respective coasts and extending seaward to the edge of the continental shelf, enjoining said States and all persons claiming under them from interfering with the rights of the United States therein, and requiring said States to account for all sums of money derived therefrom after June 5, 1950.

J. LEE RANKIN,
Solicitor General.

STATEMENT WITH RESPECT TO AMENDED COMPLAINT

By its order of June 24, 1957, the Court granted leave to the States of Texas, Mississippi, Alabama and Florida to intervene within 60 days and, if they failed to do so, granted leave to the United States to add them as parties. 354 U. S. 515. The Attorney General of Texas wrote to the Clerk of the Court on July 23, 1957, saying that Texas did not intend to intervene, because of its belief that there is no justiciable controversy between it and the United States, or between it and Louisiana, concerning either the submerged lands off the coast of Louisiana or the submerged lands off the coast of Texas, and that the

evidence as to the extent of Texas' ownership in the Gulf of Mexico is so different from that relating to other States that any controversy on the question should be heard in a separate suit. The Attorney General of Florida wrote to the Clerk of the Court on August 1, 1957, saying that Florida did not intend to intervene, because doing so might amount to bringing an unauthorized suit against the United States, and because such intervention would be unnecessary since the Solicitor General had indicated that the United States would seek to join all the Gulf States in any event. The Attorney General of Mississippi wrote to the Clerk of the Court on August 12, 1957, saying that Mississippi did not intend to intervene, because such intervention would unnecessarily encumber the pleadings, since the Solicitor General had indicated that the United States would seek to join all the Gulf States in any event. Those States having thus failed to intervene, the United States now seeks to join them as defendants, as provided by the Court's order of June 24, 1957 (as amended by the order of October 22, 1957).

On August 15, 1957, the "Intervention of the State of Alabama with Supporting Brief" was filed in this case, pursuant to the Court's order of June 24, 1957. However, it appears that such intervention cannot properly bring before the Court the controversy between the United States and Alabama regarding the submerged lands off the coast of Alabama, since those lands are not included in the subject matter of the original complaint of the United States against the State of Louisiana, and Congress has not consented

that the United States be sued with respect to them. Consequently, we have joined Alabama, along with the non-intervening Gulf States, as a defendant in the amended complaint, to effectuate the Court's purpose that the controversies between the United States and all the Gulf States be presented in this single proceeding.

In the Fifth Cause of Action, against Florida, we have included the submerged lands of the Straits of Florida and the Atlantic Ocean as well as the Gulf of Mexico, although this may go beyond the Court's purpose of considering together all claims regarding the Gulf of Mexico. Our reason for doing so is to preclude possible future assertion that our claim as to submerged lands off all the coasts of Florida constitutes a single cause of action, which would be waived as to any portion not included in the present suit. *Barnett* v. *Mayes*, 43 F. 2d 521, 528–529 (C. A. 10); *Maguire* v. *Cunningham*, 64 Cal. App. 536, 542, 222 Pac. 838; *Kline* v. *Stein*, 46 Wash. 546, 90 Pac. 1041; see *Thompson* v. *Gaudette*, 148 Me. 288, 299, 92 A. 2d 342; *Pennie* v. *Hildreth*, 81 Cal. 127, 130–131, 22 Pac. 398; cf. *Rodman* v. *Rogers*, 109 F. 2d 520 (C. A. 6); *Dook* v. *Mammoth Copper Mining Co.*, 192 Fed. 748 (C. C. N. D. Cal.); *Beronio* v. *Southern Pac. R. Co.*, 86 Cal. 415, 24 Pac. 1093. See 1 C. J. S. 1339, Actions § 105.

Respectfully,

J. LEE RANKIN,
Solicitor General.

NOVEMBER 1957.

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No. 10 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

UNITED STATES OF AMERICA ..... Plaintiff

vs.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

SEPARATE ANSWER OF THE STATE OF MISSISSIPPI TO AMENDED COMPLAINT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 11 ORIGINAL

UNITED STATES OF AMERICA ..... Plaintiff

vs.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

SEPARATE ANSWER OF THE STATE OF MISSISSIPPI TO AMENDED COMPLAINT

Now comes the State of Mississippi, one of the defendants in the above entitled and numbered cause, by its Attorney General, and, for its separate answer to that portion of the amended complaint of the plaintiff which refers to and concerns this defendant and which is designated in said amended complaint as "Third Cause of Action (against the State of Mississippi)," says:

I.

The State of Mississippi admits the allegations contained in Paragraph I, Third Cause of Action, of said amended complaint.

II.

The State of Mississippi denies the allegations contained in Paragraph II, Third Cause of Action, of said amended complaint, except insofar as the allegation that the United States had possession of and dominion and power over the lands, minerals and other things under-

lying the Gulf of Mexico from the ordinary low-water mark and from the outer limits of inland waters on the coast of Mississippi to the edge of the continental shelf, "except as set forth in Paragraph III", when construed with the Submerged Lands Act of Congress, 67 Statutes at Large 29, Section 2 (b) and (c), Section 3 (a) and (b), quitclaiming to Gulf Coastal States a maximum of three marine leagues from Coast, within historic State boundaries, and the Act of Congress which admitted Mississippi as a State into the Union and fixed its gulfward boundary at six leagues from shore in the Gulf of Mexico on December 10, 1817, must be taken as an admission by plaintiff that the defendant, State of Mississippi, is the owner and is entitled to exclusive possession of all said submerged lands, minerals and other things underlying the Gulf of Mexico, within three marine leagues from said State's coast line, which is admitted.

III.

Said Submerged Lands Act recognized, confirmed and established title to and ownership of the submerged lands and resources in said defendant State, and "released and relinquished" unto said State "all right, title and interest of the United States, if any it has" thereto within said State's boundary as it existed at the time it became a member of the Union, or as approved by Congress, within three marine leagues from its coast line into the Gulf of Mexico, which three marine leagues from coast so quitclaimed is within the six leagues from shore limits of the gulfward boundary of the State of Mississippi as it existed when said State became a member of the Union. The State of Mississippi admits the allegations contained in Paragraph III, Third Cause of Action, of said amended complaint which are not in conflict with the above statement contained in this para-

graph, but denies all allegations therein contained in conflict with said above statement.

IV.

The State of Mississippi denies the allegations of Paragraph IV, Third Cause of Action, of the amended complaint, and, further answering, avers and says that it was admitted as a State into the Union by Act of Congress, 3 Statutes at Large 472, exercising the exclusive authority granted to Congress under Article IV, Section 3, Constitution of the United States to admit new states into the Union and to fix their boundaries, which said Act of Congress admitted the State of Mississippi into the Union on December 10, 1817, and fixed the boundaries of the State of Mississippi by reference to the Enabling Act of March 1, 1817, 3 Statutes at Large 348, as follows:

"That the said state shall consist of *all the territory included within the following boundaries*, to-wit:

Beginning on the river Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear Creek, thence by a direct line to the north-west corner of the county of Washington, thence due south to the Gulf of Mexico, thence westwardly, *including all the islands within six leagues of the shore*, to the most eastern junction of Pearl river with Lake Borgne, thence up said river to the thirty-first degree of north latitude, thence west along the said degree of latitude to the Mississippi river, thence up the same to the beginning." (Emphasis supplied).

That the original Constitution of the State of Mississippi, adopted in the year 1817, prior to its admission as a State into the Union, which said Constitution was

approved by Congress by the act of admitting said State into the Union, described the boundaries of the said State of Mississippi in the following manner, to-wit:

"We, the representatives of the people inhabiting the western part of the Mississippi Territory, *contained within the following limits*, to-wit: Beginning on the river Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same; thence east along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence, by a direct line, to the north-west corner of the county of Washington; thence due south to the Gulf of Mexico; thence westwardly, *including all islands within six leagues of the shore*, to the most eastern junction of Pearl River with Lake Borgne; thence up said river to the thirty-first degree of north latitude; thence west along the said degree of latitude to the Mississippi River, thence up the same to the beginning." (Emphasis supplied).

That, therefore, when said State of Mississippi became a member of the Union, and prior thereto, its boundary extended six leagues from shore into the Gulf of Mexico, which gulfward boundary exceeds the maximum of three marine leagues from its coast line as provided for under the Submerged Lands Act of Congress, 67 Statutes at Large 29, and further that the boundaries of said State as designated at the time it became a member of the Union as aforesaid have not been diminished since that time.

V.

The state of Mississippi denies the allegations contained in Paragraph V, Third Cause of Action, of said amended complaint to the effect that the United States is entitled to an accounting for all sums of money derived

from the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Mississippi, extending seaward to the edge of the Continental Shelf by said State of Mississippi, after June 5, 1950, and further denies that the United States is entitled to an accounting for any period of time and in any sum whatsoever from said State of Mississippi. The State of Mississippi further denies the allegations of said Paragraph V insofar as the United States claims that it is entitled to exclusive possession of and full dominion and power over the lands, minerals and other things underlying the Gulf of Mexico, lying within three marine league from the coast line of the State of Mississippi. Except as herein specifically denied, the State of Mississippi admits the allegations of said Paragraph V.

VI.

The State of Mississippi admits the allegation contained in Paragraph VI, Third Cause of Action, of the amended complaint to the effect that it has not accounted to the United States for all or any sums of money derived from the lands, minerals and other things underlying the Gulf of Mexico, lying more than three geographic miles seaward from the ordinary low-water mark and from the outer limit of inland waters on the coast of Mississippi, and, answering further, denies that it has any legal or equitable duty to account to the United States for all or any sums of money derived from the lands, minerals and other things so situated as aforesaid. The State of Mississippi denies the other allegations contained in said Paragraph VI, Third Cause of Action, and avers and says that the State of Mississippi claims

and exercises its right, title and interest in the lands, minerals and other things underlying the Gulf of Mexico included within its gulfward boundary as it existed at the time said State became a member of the Union, as shown in Paragraph IV above, lying within three marine leagues from its coast line, under the provisions of said Submerged Lands Act of Congress, and as referred to in the outer Continental Shelf Lands Act, 67 Statutes at Large 462, which said Submerged Lands Act specifically acknowledged and confirmed in the State of Mississippi ownership of the submerged lands and resources beneath its navigable waters as defined in Section 2 of said Submerged Lands Act, within three marine leagues from its coast line into the Gulf of Mexico as designated and defined in accordance with applicable Acts of Congress, and the claim made herein on behalf of the United States adverse to such right, title or interest of the defendant, State of Mississippi, is in conflict with and in violation of the above applicable Acts of Congress and provisions of the Constitution of the United States.

VII.

The State of Mississippi admits the allegations contained in Paragraph VII, Third Cause of Action, of the amended complaint. Answering further, however, the State of Mississippi denies any allegations contained in said First Cause of Action against the State of Louisiana which are opposed to or in conflict with the claims and contentions of the State of Mississippi contained in this answer, whether explicitly or by inference, and particularly denies the plaintiff's allegations found in Paragraph IX of said First Cause of Action that the "fundamental question in issue is the width of the marginal sea within the jurisdiction of the United States, which involves inquiry into and application of the foreign policy

of the United States," and, on the contrary, avers and says that the issues herein are wholly internal matters, the Congress and the President of the United States having declared, and no other nation having challenged or here challenging, the extent of the boundaries of the United States.

VIII.

Answering further, in the alternative, the State of Mississippi avers and says that in the event its said primary contention that its territorial boundary extends three marine leagues from its coast line into the Gulf of Mexico and that it is the owner and holder of title to the lands underlying said Gulf of Mexico within three marine leagues from its said coast line and the natural resources within said lands and waters should not prevail, then it is the alternative position of the State of Mississippi that at least it is the owner of or has the right to the natural resources within said area under the provisions of said Submerged Lands Act, with the exclusive right of management, administration, leasing, use and development of such lands and natural resources, including the exclusive right to explore for and extract such natural resources from said submerged lands.

IX.

The State of Mississippi makes no answer to the First, Second, Fourth and Fifth Causes of Action contained in said amended complaint of the plaintiff herein since said named Causes of Action are directed solely and exclusively against the States of Louisiana, Texas, Alabama and Florida, respectively, and none of said Causes of Action are directed against or in any way involve the State of Mississippi.

WHEREFORE, the State of Mississippi prays that the demands of plaintiff be rejected and that judgment be rendered herein in favor of said State of Mississippi decreeing that said State has exclusive title to and ownership of the lands beneath navigable waters within three marine leagues from its coast line into the Gulf o Mexico and the natural resources within such lands and waters, as provided in said Submerged Lands Act, 67 Statutes at Large 29.

In the alternative, in the event its prayer contained in the next preceding paragraph does not prevail, the State of Mississippi prays that this Honorable Court decree that said State at least is the owner of or has the right to the natural resources within said area, with the exclusive right of management, administration, leasing, use and development of such lands and natural resources, including the exclusive right to explore for and extract such natural resources from said submerged lands.

In the event it is mistaken in the relief prayed for, the defendant, State of Mississippi, prays for such other, further, different or more general relief as the Court may deem meet and proper.

JOE T. PATTERSON,
Attorney General of Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General

December 1957.

PROOF OF SERVICE

I, Joe T. Patterson, Attorney General of the State of Mississippi, and a member of the bar of the Supreme Court of the United States, hereby certify that on the ____ day of December, 1957, I served copies of the foregoing answer to Amended Complaint on the several parties to said cause, as follows:

(1) On the United States, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington 25, D. C., and

(2) On the States of Texas, Louisiana, Alabama and Florida, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to their respective Attorneys General at their respective addresses as follows: Capitol Building, Austin, Texas; Capitol Building, Baton Rouge, Louisiana; Judicial Building, Montgomery, Alabama; and Capitol Building, Tallahassee, Florida.

.....

JOE T. PATTERSON
Attorney General of Mississippi

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FILED
DEC 27 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 11 Original

UNITED STATES OF AMERICA,
Plaintiff

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA, and FLORIDA
Defendants.

ANSWER OF DEFENDANT THE STATE OF TEXAS TO SECOND CAUSE OF ACTION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 11 Original

UNITED STATES OF AMERICA,
Plaintiff

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA, and FLORIDA
Defendants.

ANSWER OF DEFENDANT THE STATE OF TEXAS TO SECOND CAUSE OF ACTION

The State of Texas, a defendant herein, by its Attorney General, in compliance with the Court's order of November 18, 1957, for answer to the Second Cause of Action of the Amended Complaint of the United States of America says:

I.

Texas admits the allegations in paragraph I.

II.

Texas admits the allegations in paragraph II to the extent but only to the extent that such allegations are a restatement of this Honorable Court's opinion and decree in *United States v. Texas*, 339 U.S. 707.

III.

Texas admits the allegations in paragraph III.

IV.

Texas admits that on May 22, 1953, Congress enacted Public Law 31, 83rd Congress, known as the Submerged Lands Act, 67 Statutes at Large 29. The terms of the Act in context are controlling. Texas denies that in paragraph IV the plaintiff has completely stated the terms and effect of the Act.

V.

Texas denies each and all of the allegations of paragraph V.

VI.

Texas denies those allegations in paragraph VI demanding an accounting and further denies all other allegations in this paragraph insofar as they may pertain to the lands, minerals and other things in and under the Gulf of Mexico, lying more than three geographic miles seaward from, and extending

seaward three marine leagues from, the ordinary low-water mark and from the outer limit of inland waters on the coast of Texas. Except as specifically denied, Texas admits the allegations of paragraph VI.

VII.

Texas admits the allegations in paragraph VII.

VIII.

Texas does not have sufficient information either to admit or deny the allegations contained in the first sentence of paragraph VIII. Texas admits the allegations of the second and third sentences of said paragraph.

IX.

Further answering, Texas says:

A. Prior to and at the time of its admission to the Union the statutes of the Republic of Texas fixed its seaward boundary as follows:

> ". . . beginning at the mouth of the Sabine River and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande. . . "

This boundary so fixed was the boundary of the Republic of Texas and of the state of Texas as it existed at the time Texas became a member of the Union.

B. This seaward boundary was approved by the Congress of the United States at and after the time Texas was admitted to the Union and prior to the enactment of the Submerged Lands Act on May 22, 1953.

C. Therefore, by reason of the allegations of either subparagraph A or subparagraph B above, or subparagraphs A and B together, the United States on May 22, 1953, by the Submerged Lands Act, and subject to its limitations, released and relinquished to the State of Texas title to and ownership of and the rights of management, administration, leasing, use and development of the lands and natural resources in the Gulf of Mexico within the area in controversy (described in paragraph VI hereof) and further by the terms of said Act released its claim for accounting and damages.

X.

In the alternative, inasmuch as the lands and boundaries of Texas existed and extended three marine leagues from the coast before and at the time Texas became a member of the Union, or were so fixed by subsequent congressional or executive action, the present boundary of Texas was confirmed and the national boundary was fixed on May 22, 1953, by the terms of the Submerged Lands Act at three marine leagues from the coast of Texas irrespective of where the national boundary or the boundary of Texas may have been fixed, or attempted to be fixed, otherwise during the intervening period

from the admission of Texas into the Union to the date of passage of the Submerged Lands Act. Hence the United States on May 22, 1953, by the Submerged Lands Act, and subject to its limitations, released and relinquished to the State of Texas title to and ownership of and the rights of management, administration, leasing, use and development of the lands and natural resources in the Gulf of Mexico within the area in controversy (described in paragraph VI hereof) and further by the terms of said Act released its claim for accounting and damages.

XI.

In the alternative, Texas says that the United States has asserted certain rights in, jurisdiction and control over, and the power of disposition of the natural resources in the subsoil and sea-bed of the continental shelf, as evidenced by the Presidential Proclamation of September 28, 1945 (59 Statutes at Large 884) and as subsequently defined and augmented by the Submerged Lands Act and the Outer Continental Shelf Lands Act (67 Statutes at Large 462). By the Submerged Lands Act and subject to its limitations, the United States, irrespective of the location of its national boundary or the State boundary of Texas on May 22, 1953, transferred and assigned to Texas all of these rights, title and interests of the United States asserted under the Presidential Proclamation within the area in controversy and released its claim for accounting and damages.

XII.

The State of Texas denies each and every allegation contained in the Second Cause of Action of said complaint not herein admitted, controverted or specifically denied.

WHEREFORE, the State of Texas prays that Plaintiff take nothing by its Second Cause of Action, that Plaintiff's suit as to this defendant be dismissed with prejudice and that all costs properly allocable to the Second Cause of Action be taxed against the United States.

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Of Counsel

December 31, 1957

PROOF OF SERVICE

I, Will Wilson, Attorney General of Texas, and a member of the Bar of the Supreme Court of the United States, certify that on the 24th day of December, 1957, I served copies of the foregoing answer of the State of Texas to the Amended Complaint by mailing, postage prepaid, copies thereof to the officies of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Alabama, Florida, Louisiana, and Mississippi, respectively.

WILL WILSON

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DEC 28 1957
JOHN T. FEY, Clerk

No. 10 Original

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA,
Defendants.

DEFENSES TO AMENDED COMPLAINT

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United States Senator
Washington, D. C.

RICHARD W. ERVIN
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Capitol Building
Tallahassee, Florida

SOLICITORS FOR THE
STATE OF FLORIDA

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11 Original

UNITED STATES OF AMERICA,
PLAINTIFF,

v

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA
DEFENDANTS.

DEFENSES TO AMENDED COMPLAINT FIRST, SECOND, THIRD AND FOURTH CAUSES OF ACTION

The State of Florida files no defenses to the First, Second, Third and Fourth Causes of Action, alleged in and by the Amended Complaint filed herein, they being directed exclusively and specifically against the States of

Louisiana, Texas, Mississippi and Alabama, and not against the State of Florida.

FIFTH CAUSE OF ACTION

The State of Florida for defenses to the Fifth Cause of Action, alleges in and by the plaintiff's Amended Complaint and Statement with respect to said Amended Complaint, heretofore filed in this cause, says that she:

FIRST DEFENSE

1. Admits the allegations of paragraph numbered "I" of the said Fifth Cause of Action.

2. Denies the allegations of paragraph numbered "II" of the said Fifth Cause of Action.

3. Admits the allegations of paragraph numbered "III" of the said Fifth Cause of Action.

4. Denies the allegations of paragraph numbered "IV" of the said Fifth Cause of Action.

5. Denies the allegations of paragraph numbered "V" of the said Fifth Cause of Action.

6. Admits the allegations of paragraph numbered "VI" of the said Fifth Cause of Action;

however, she further alleges that she is under no legal or equitable duty to account to the plaintiff for any sums of money received from or relating to the lands, minerals or other things underlying the "coast line" of Florida as defined in and by subsection (c) of section 1301, title 43, of the United States Code.

7. Admits the allegations of paragraph numbered "VII" of the said Fifth Cause of Action.

SECOND DEFENSE

For a Second Defense to the said Fifth Cause of Action the said State of Florida says that subsequent to the admission into the Union, and during or about the year 1868, her boundaries in the Gulf of Mexico were approved by the Congress of the United States as being "three leagues from the land." In that the Congress, by its act of March 2, 1867, provided that "when the people of any one of said rebel states shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, . . . and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same . . . said State shall be declared entitled to repre-

sentation in Congress . . . ;" and the State of Florida, having formed such a state constitution, adopted the same by a majority vote of its qualified and voting electors, and caused the same to be submitted to the Congress of the United States during the year 1868, and the same having been approved by the Congress, and the State of Florida admitted to representation in Congress, as evidenced by acts and resolutions of the Congress and the journals of the Congress as reflected by the "Congressional Globe" for 1867 and 1868, it is, therefore, alleged that the Congress, subsequent to the admission of the State of Florida into the Union, heretofore approved the boundaries of the State of Florida as extending into the Gulf of Mexico for a distance of three leagues from the "coast line" as defined in and by subsection (c) of section 1301, title 43, of the United States Code, all within the purview of section 1312, title 43, United States Code.

THIRD DEFENSE

For a Third Defense to the said Fifth Cause of Action the said State of Florida says that the United States acquired the Spanish Territories known as **East and West Florida** from the Kingdom of Spain under and by virtue of the "Treaty

of Amity, Settlement and Limits," of February 22, 1819, entered into by and between the said United States and the said Kingdom of Spain, under the requirement in said treaty contained that the said territories "be incorporated in the Union of the United States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights and immunities, of the citizens of the United States." Under the statutes and laws of Spain, and of Great Britain from whom Spain acquired the Floridas by treaty of 1783, and pursuant to a proclamation made and issued by the King of Great Britain during the time the Floridas were held and owned by Great Britain, the seaward boundaries of the said Floridas extended into the Gulf of Mexico not less than three marine leagues from the "coast line" as defined in subsection (c) of section 1301, title 43, of the United States Code. It is, therefore, alleged that the boundary of the Floridas and of the State of Florida, as authorized and contemplated by section 1312, title 43, United States Code, extended into the Gulf of Mexico not less than three marine leagues from the "coast line" aforesaid, prior to and when the State of Florida became a member of the Union.

FOURTH DEFENSE

For a Fourth Defense to the said Fifth Cause of Action the said State of Florida says that under the statutes and laws of Spain, and under treaties by and with Spain, as well as under international laws as administered by Spain, prior to and at the time the United States acquired the Floridas from Spain, as well as when Florida became a member of the Union, Spanish international boundaries extended into adjoining oceans, seas and other general bodies of navigable waters adjacent thereto nine or more marine leagues from the coast line of Spanish territories and possessions. This being true the historical boundaries of the Floridas, when acquired by the United States, and of the State of Florida when she became a member of the Union, extended into the Gulf of Mexico three or more marine leagues from the coast line of the said Floridas or the State of Florida.

FIFTH DEFENSE

For a Fifth Defense to the said Fifth Cause of Action the said State of Florida says that there is no rule of international law or rule of nations which limits the marginal sea and the seaward boundaries of states and nations to not

more than three geographic miles from the ordinary low water mark and from the outer waters on the coasts of such states and nations and further says that such rules of international law and rules of nations do not invalidate the provisions of the Submerged Lands Act of May 22, 1953, which releases and relinquishes to the states bordering on the Gulf of Mexico the right, title and interest to submerged lands in the said Gulf of Mexico, including all improvements and natural resources therein, thereon, or in the waters above such land.

SPESSARD L. HOLLAND
United States Senator
Washington, D. C.

RICHARD W. ERVIN
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SOLICITORS FOR THE
STATE OF FLORIDA

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No. 10 ORIGINAL

In the
Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Answer of the State of Louisiana to the Amended Complaint

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No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Answer of the State of Louisiana to the Amended Complaint

Now comes the State of Louisiana, defendant herein, through its Attorney General, and reserving all rights and defenses heretofore asserted in these proceedings and without in any manner waiving or abandoning the same, files its answer to the amended complaint filed by the United States of America, through its Solicitor General, pursuant to order of this court of June 24, 1957, as amended by the order of October 22, 1957.

I.

No answer is required to Article I.

II.

Answering Article II of the amended complaint, the State of Louisiana avers that, prior to the decision of this Honorable Court in *United States v. California*,[1] there was no official recognition of any claim of the United States as against the states which com-

[1] 332 U. S. 19, 67 S. Ct. 1658, 91 L. Ed. 1889; followed in *U. S. v. Texas*, 339 U. S. 707, 94 L. Ed. 1221, and *U. S. v. Louisiana* 339 U. S. 699, 94 L. Ed. 1216.

pose it to submerged lands lying off the coast and the decision in the California Case stated that "the Federal Government rather than the state has paramount rights in and power over that belt (the three mile belt), an incident to which is full dominion over the resources of the soil under that water area, including oil."

The Submerged Lands Act[2] and the Outer Continental Shelf Lands Act[3] were passed by Congress and signed by the President in 1953, the first to confirm and establish the titles of the states and of the United States within the limits prescribed by the statute, and the second to provide for the jurisdiction of the United States over the submerged lands of the outer continental shelf. Accordingly, the State of Louisiana denies that the United States is entitled to possession and dominion and power over the lands and minerals underlying the Gulf of Mexico and extending seaward three marine leagues from the coast as defined in the Submerged Lands Act.

III.

Answering Article III of the amended complaint, the State of Louisiana says that, although a decree was entered by this Court on December 11, 1950, in the case of *United States v. Louisiana*, 340 U. S. 899, which decree speaks for itself, defendant shows that since this decree was rendered, Congress enacted and the President signed the Submerged Lands Act, su-

[2] 67 Stat. 29, 43 U.S.C. 1301.
[3] 67 Stat. 462, 43 U.S.C. 1332.

pra, effective as of May 22, 1953, and by its provisions and the provisions of the Outer Continental Shelf Lands Act, the United States quitclaimed, confirmed and established the titles of the states to certain lands beneath navigable waters within state boundaries and to the natural resources within such lands and waters. Said Acts also provide for the use and control of said lands and resources and declare therein the rights of the states by which title to and ownership of the lands beneath navigable waters within the boundaries of the respective states and the natural resources within such lands and waters, and the right and power to manage, administer, lease, develop and use the said lands and natural resources were recognized, confirmed, established, and vested in the states. In said Acts the United States released and relinquished unto the states all right, title and interest, if any it had, in and to all said lands, improvements and natural resources and all claims of the United States, if any it had, for money or damages arising out of any operations of said states or persons pursuant to the state authority upon or within said lands and navigable waters.

IV.

In answer to Article IV of the amended complaint, Louisiana admits that by the Submerged Lands Act described therein, the United States released and relinquished to the State of Louisiana all claims of the United States, if any it had, for money or damages arising out of any operations by the State of Louisiana within this area defined in said Act, and es-

tablished title to all submerged lands and natural resources in the State of Louisiana and released and relinquished unto Louisiana all right, title and interest of the United States, if any it had, thereto, within Louisiana's historic boundaries extending three marine leagues into the Gulf of Mexico from the coast.

V.

The allegations of Article V of the amended complaint are denied.

Further answering, Louisiana avers that its southern boundary was established by Congress in the Enabling Act[4] which admitted Louisiana into the Union and by the Constitution of the State of Louisiana at that time, as three marine leagues from its coast into the Gulf of Mexico; that prior to the decision of this Honorable Court in *United States v. California*, *supra*, and the passage of the enactment of the Submerged Lands Act and the Outer Continental Shelf Lands Act, Louisiana's southern boundary was deemed to be co-extensive with the southern boundary of the United States, but, if said decision and said statutes have the effect of limiting the present southern boundary of the State of Louisiana, then pursuant thereto the boundary of the State of Louisiana must extend three marine leagues into the Gulf of Mexico from its coast.

In the alternative, the State of Louisiana shows that if the Court shall find that Louisiana's present territorial boundary does not extend three marine

[4]Act of Congress, April 8, 1812, 2 Stat. 701.

leagues into the Gulf of Mexico from its coast, nevertheless three (3) leagues from coast is the measure within which Louisiana is entitled to take the natural resources, including oil, whether the same is within the territory of the United States or only appertains to the United States.

VI.

Article VI of the amended complaint is denied.

VII.

Answering Article VII of the amended complaint, Louisiana admits that it is claiming rights adverse to the United States in the submerged lands, minerals and other things underlying the Gulf of Mexico to the extent of at least three marine leagues from the coast of Louisiana; that, prior to the injunction issued by this Honorable Court of June 11, 1956, the State of Louisiana invited bids for leases of submerged lands within the area mentioned in said article, and warned lessees of the United States that it would take all action necessary to protect the state's interest within said area.

VIII.

Article VIII of the amended complaint is denied, except as may hereinafter be specifically admitted. The State of Louisiana admits that there is a need to establish the rights of the respective parties and Louisiana avers that such rights cannot be properly established until the claim of the State of Louisiana to all submerged lands and natural resources within

not less than three marine leagues from its coast is recognized.

Further answering Article VIII, the State of Louisiana avers that in this proceeding this Honorable Court issued on June 11, 1956, an order which maintained the status quo in this matter and which order provided among other things the following:

> "It is further ordered that the State of Louisiana and the United States of America are enjoined from leasing or beginning the drilling of new wells in the disputed tidelands area pending further order of this court unless by agreement of the parties filed here."

Pursuant to said order the United States of America and the State of Louisiana entered into an interim agreement on October 12, 1956, which agreement was filed in this Honorable Court and that the rights of both parties are fully protected during this controversy by the terms of said interim agreement.

IX.

In answer to article IX of the amended complaint, the State of Louisiana says that the President of the United States and the Congress of the United States have asserted the extent of American territory in the Gulf of Mexico and the rights appertaining thereto and have set forth the extent to which the United States and the coastal states shall participate in the natural resources appertaining to such territory and to such "extra-territorial" rights. Accordingly the present controversy does not involve anything with which any foreign power can be concerned but is wholly an internal matter.

The Submerged Lands Act, supra, which released and relinquished unto the States bordering on the Gulf of Mexico, all right, title and interest of the United States, if any it had, in and to the oil and other resources beneath the waters of the Gulf of Mexico extending three marine leagues from the coast, does not involve any international question to be passed upon by this Honorable Court; however, to the extent that any international question could be raised thereby, the action of Congress, concurred in by the President, is final and the question as to the area within the control of the United States as a nation in which jurisdiction may be exercised by a state of the Union pursuant to congressional enactment, is purely a domestic matter.

X.

Further answering, defendant denies that any foreign policy has been adopted by the United States through or under the authority of the Constitution or the Congress of the United States which in any manner affects the historic boundary of the State of Louisiana as fixed by the Act of Congress which admitted the state into the Union; nor can any inquiry into said application of foreign policy of the United States as alleged, affect or diminish in any manner the quitclaim by the United States contained in said Submerged Lands Act to the State of Louisiana of the exclusive title to and ownership of the lands beneath navigable waters within three leagues from its coast line into the Gulf of Mexico and the natural resources within such lands and waters.

Further answering, defendant shows that even if complainant succeeds in the attempt to restrict the state's historic seaward boundaries to a three mile belt based upon irrelevant claims concerning "foreign policy", this would not defeat Louisiana's claim to the natural resources within three leagues of its coast, but would needlessly strip the gulf coastal states and the United States of a considerable portion of their gulfward territory based upon historic title which is not in conflict with International law.

XI.

Further answering the amended complaint, the State of Louisiana avers:

A. That by the terms of the Submerged Lands Act, supra, the State of Louisiana is entitled to the submerged lands as territory but if not as territory, then it has the right to take the oil and other natural resources in the submerged lands, to its boundary line gulfward to the distance measured by its boundary as it existed at the time the State of Louisiana became a member of the Union or prior thereto, or as approved by Congress prior to May 22, 1953. The said Submerged Lands Act, supra, established a boundary line three geographical miles distant from the coast of the states bordering the Atlantic and Pacific Oceans and established the international boundary line as the boundary of the states bordering the Great Lakes. With respect to the states bordering the Gulf of Mexico, which traditionally had claimed more, Section

4 of the Submerged Lands Act provides specifically that nothing in this section is to be construed as questioning or in any manner prejudicing the existence of any state's seaward boundary beyond three geographical miles if it were so provided by its constitution or laws prior to or at the time such state became a member of the Union, or if it has been theretofore approved by Congress. The only limit set by said Submerged Lands Act to the rights of the states on the Gulf of Mexico, is in Section 2(b), which limit is not "more than three marine leagues into the Gulf of Mexico from the coast."

B. Further answering the amended complaint, the State of Louisiana shows that France and Spain, who owned the Louisiana territory before its purchase by the United States in 1803, legally claimed far more than three marine leagues from coast into the Gulf of Mexico, as fully outlined in the brief filed herein by the State of Louisiana on March 28, 1957, in opposition to motion for judgment by the United States.

C. The Act of purchase of Louisiana from France gave emphasis to the acquisition of the marine area in a special article which reads:

ARTICLE II

"In the cession made by the preceding article are included the *adjacent* islands belonging to Louisiana , . . ."[5] (*Italics* added).

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[5] Treaty for the Cession of Louisiana from France to the United States, signed at Paris, April 30, 1803, 8 Stat. 200.

D. The State of Louisiana shows that by Act of March 26, 1804, 2 Stat. 283, creating the territory of Orleans; by Act of February 20, 1811, 2 Stat. 641, enabling the people of the territory of Orleans to form a constitution and state government and by Act of April 8, 1812, 2 Stat. 701, providing for the admission of the State of Louisiana into the Union, Congress established the territory of the State of Louisiana as all that area contained within the following limits, that is to say: **"beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river,** including all islands to the 32nd degree of latitude; thence due north to the northern most part of the 33rd degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; **thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast.".** (emphasis supplied).

E. The Constitution of Louisiana, adopted January 22, 1812, conforms to the said Enabling Act of Congress.

F. At a time when the United States considered that the territorial limits of the United States were co-extensive with the territorial limits of the states, the United States established with Spain, Mexico and Texas a boundary for the State of Texas in the Gulf of Mexico three marine leagues from land at

the mouth of the Sabine River. An Act of the Congress of the Republic of Texas defined the boundary of the Republic of Texas thus: "Beginning at the mouth of the Sabine River, and running west along the Gulf of Mexico three marine leagues from land to the mouth of the Rio Grande",[6] and this boundary was specifically recognized by the United States in its Treaty with the Republic of Texas signed at Washington on April 25, 1838.[7] The establishment of the southeast corner of the State of Texas three leagues seaward in the Gulf of Mexico as a part of the boundary between the United States and the Republic of Texas necessarily recognized that the southwest corner of the boundary of the State of Louisiana extended at least three marine leagues into the Gulf of Mexico.

G. This court in *United States v. State of Texas*,[8] and in *Louisiana v. Mississippi*,[9] *has twice recognized* that the boundary of the State of Louisiana, as fixed by the Act of 1812, includes a water area, declaring in the latter case the "ownership of the State of Louisiana in the land and water territory" described therein, and the United States is bound by said decisions.

H. The Act of Congress, admitting Louisiana into the Union,[10] like the Acts of Admission of other Gulf Coast States provided that the State of Louisiana be admitted on an "equal footing. . .in all respects" with

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[6] 1 Gammel's Laws of Texas, pages 1193-1194.
[7] 8 Stat. 511, 4 Miller's Treaties 133.
[8] 162 U. S. 1, 16 Sup. Ct. 725, 40 L. Ed. 867.
[9] 202 U. S. 1, 26 S. Ct. 408, So. L. Ed. 913.
[10] 2 Stat. 701.

other States of the Union and this court has ruled that all states must be maintained on an equality which is "equal in power, dignity and authority,"[11] and that the equal footing clause, among other things, refers to sovereignty over power and "has a direct effect on certain property rights."[12] Louisiana is accordingly entitled to an equal footing with respect to sovereignty over and property rights in the Gulf of Mexico with other states bordering the same whose boundaries have been recognized by Congress as extending three leagues seaward.[13]

I. The State of Louisiana avers that its historic boundary extends into the Gulf of Mexico more than three marine leagues from its coast line as hereinabove shown, and that the Congress of the United States has recognized that boundary to the extent of at least three marine leagues from the coast line of the State of Louisiana.

XII

The State of Louisiana reiterates and makes a part hereof all of the defenses contained in its answer to the original complaint.

WHEREFORE, the State of Louisiana reserves all of its rights and defenses previously asserted and particularly under the motion to take depositions previously filed, and prays that a decree be entered here-

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[11] *Coyle v. Smith* 221 U. S. 566-7, 55 L. Ed. 853, 858; House Report No. 215, Submerged Lands Act p. 43; Senate Report No. 133, Submerged Lands Act p. 64 and 65.
[12] *U. S. v. Texas*, 339 U. S. 707, 94 L. Ed. 1221.
[13] Appendix to Louisiana's brief p. 23, p. 75 to 86, inclusive; House Report No. 133, Submerged Lands Act p. 64 and 65.

in decreeing that Louisiana is entitled to the lands and natural resources under its submerged lands as originally prayed for; in the alternative, that it is entitled to said lands extending into the Gulf of Mexico at least three marine leagues beyond its coast line; and in the further alternative, that if Louisiana's territorial boundary does not extend three marine leagues into the Gulf of Mexico from its coast, then that distance is nevertheless the measure provided by the Submerged Lands Act within which Louisiana has a right to take the natural resources and other things. Louisiana further prays for all orders and decrees necessary and proper in the premises and for full general and equitable relief.

Respectfully submitted,

JACK P. F. GREMILLION
Attorney General
State of Louisiana

PROOF OF SERVICE

I, the undersigned, of Counsel for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the _____ day of _____, 19——, I served copies of the foregoing answer of the State of Louisiana to the Amended Complaint by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and by mailing, postage prepaid, copies of said answer to the States of Texas, Mississippi, Alabama and Florida.

_____

Of Counsel

MOTION FILED DEC 30 1957

No. 10 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Motion for Pretrial Conference and Statement in Support of Motion

JACK P. F. GREMILLION
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No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

Motion for Pretrial Conference and Statement in Support of Motion

Now come the States of Florida, Alabama, Mississippi, Louisiana and Texas, made defendants in this Original Action, appearing through their respective Attorneys General, and move that this Honorable Court order and hold a pre-trial conference herein.

STATEMENT IN SUPPORT OF MOTION

PART III, Rule 9 (2), of the Rules of this Honorable Court provides that "The form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure, and in other respects those rules, where their application is appropriate, may be taken as a guide to procedure in original actions in this court."

Rule 16 of the Federal Rules of Civil Procedure provides in part that, "In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

"(1) The simplification of the issues;
(2) The necessity or desirability of amendments to the pleadings;
(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
(4) The limitation of the number of expert witnessess;
(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
(6) Such other matters as may aid in the disposition of the action."

It is, therefore, respectfully submitted:

(A) That not only does this Honorable Court have inherent powers to grant and order a pre-trial conference in cases wherein it assumes original jurisdiction under Article III, Section 2, Clause 2 of the Constitution of the United States, as in the instant case where the five States who are movants herein are parties defendant, but the authorities above cited constitute sufficient specific authority for the court to order a pre-trial conference in conformity with this motion;

(B) That this case, brought by the United States of America, plaintiff, originally docketed as Cause No. 7 Original, at the October term, 1954, of this Honor-

able Court, named the State of Louisiana as the sole party defendant. That subsequently, the State of Texas filed an amicus curiae brief, and on June 24, 1957, this Honorable Court entered an order granting leave to each of the States of Alabama, Florida, Mississippi and Texas to intervene in said suit originally filed against the State of Louisiana, and upon failure of said States, or any of them, to intervene within 60 days, the order granted leave to the United States, within 60 days thereafter, to file an amended or supplemental complaint adding as parties to said suit any of such States as shall not have so intervened. Whereupon, the United States of America amended its original complaint in said cause and named the States of Alabama, Florida, Mississippi, Texas and Louisiana as parties defendant. By order of this Honorable Court entered on November 18, 1957, movants herein were directed to answer said amended complaint within 45 days from that date;

(C) That prior to the adding and joining of the States of Texas, Mississippi, Alabama and Florida as parties defendant by the filing of said amended complaint by the United States, and while Louisiana was the sole and only defendant, said cause was argued by the then only parties thereto and was submitted for judicial determination. However, since the amended complaint also includes the State of Louisiana, it would now appear that said amended complaint forms the basis for and has the effect of a proceeding de novo insofar as the State of Louisiana is concerned as

well as the said other four States named as parties defendant;

(D) That due to the nature of this suit and the developments herein as aforesaid, procedural questions important to the proper consideration and determination of the issues in this cause have arisen which can best be resolved at a pre-trial conference attended by the attorneys for all interested parties. Among the matters which should be considered at such a conference and which, if resolved, would result in a simplification of the issues and generally aid in the disposition of this action, are the following:

(1) The length of oral argument and the amount of time allotted to each particular State for its argument should be determined in the event the plaintiff should file a motion for judgment on the amended complaint and the answers thereto;

(2) The order of argument among the respective States named as parties defendant;

(3) The question of whether said amended complaint has the effect of a proceeding de novo against the State of Louisiana;

(4) If at a conference the question of taking evidence and the referral of the action to an inferior tribunal or a Special Master for that purpose could be explored, argument might then be concentrated more on the principal issue;

(5) After hearing from counsel for all of the parties at the conference, the court might then deem it appropriate to fix the time within which briefs shall be filed.

(E) That due to the unusual and complex character of this suit, it is necessary that the attorneys for the parties hereto, either individually or collectively, inquire of this Honorable Court as to procedural steps to be taken in this action; that should said attorneys individually approach the Court for procedural instruction then a lack of mutuality of understanding is likely to result and, in addition, the following of such a course would amount to an unnecessary and burdensome intrusion upon the valuable time of this Honorable Court, but that a pre-trial conference, in which the attorneys for all of the parties hereto are invited to participate, held as soon as convenient to the Court, would result not only in a saving of valuable time but would result in a clearer and more certain understanding of the issues involved and would settle the procedural questions posed; and that, therefore, the ends of justice and the interests of all parties concerned can best be served by the granting of a pre-trial conference for the purpose of considering these matters.

Respectfully submitted,

JACK P. F. GREMILLION
Attorney General
State of Louisiana

RICHARD W. ERVIN
Attorney General
State of Florida

JOHN M. PATTERSON
Attorney General
State of Alabama

JOE T. PATTERSON
Attorney General
State of Mississippi

WILL WILSON
Attorney General
State of Texas

PROOF OF SERVICE

The undersigned, of counsel of record for defendants, acting for and on behalf of the States of Louisiana, Texas, Mississippi, Alabama and Florida, and their respective Attorneys General, and a Member of the Bar of the Supreme Court of the United States, certify that I served copies of the foregoing motion by the defendant States herein for pre-trial conference and statement in support of motion, by leaving copies thereof at the Offices of the Attorney General and of the Solicitor General, respectively, of the United States, in the Department of Justice Building, Washington, D. C., on the_____ day of_____, 19____.

_____

Of Counsel

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FILED
DEC 31 1957
JOHN T. FEY, Clerk

NO. 11, ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA,
Plaintiff

v.

STATES OF LOUISIANA,
TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

ANSWER AND CROSS-BILL OF STATE OF ALABAMA TO AMENDED COMPLAINT

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Of Counsel

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 11, ORIGINAL

UNITED STATES OF AMERICA,

Plaintiff

v.

STATES OF LOUISIANA,
TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

ANSWER AND CROSS-BILL OF STATE OF ALABAMA TO AMENDED COMPLAINT

Now comes the State of Alabama and for answer to the amended complaint exhibited against it as plaintiff's fourth cause of action says as follows:

I.

The State of Alabama admits the allegations of paragraphs I, VI and VII of the amended complaint, but avers as to paragraph VI that no legal or equitable duty rests upon it to account to the United States of America for any sums of money received from or relating to the lands, minerals and other things underlying the Gulf of Mexico, seaward from the coast line of the State of Alabama, three marine leagues into the Gulf of Mexico.

II.

The State of Alabama denies the allegations of paragraphs II, IV and V of the amended complaint.

III.

The State of Alabama admits, as answer to paragraph III of the amended complaint, that by the Submerged Lands Act, 67 Statutes at Large 29, title to and ownership of, or the paramount rights in the lands beneath and natural resources within the Gulf of Mexico within the boundaries of said state, were recognized, confirmed, established and vested in and assigned to the State of Alabama, but not extending seaward more than three geographical miles from the ordinary low-water mark or from the outer limit of inland waters, unless the boundary extended further than three geographical miles therefrom as shown by its Constitution or laws prior to or at the time the State of Alabama became a member of the union, or as approved by Congress, but in no event to exceed three marine leagues from the coast line. The other allegations of said paragraph not in conflict herewith are admitted.

IV.

Further answering said amended complaint, the State of Alabama avers that before admission to the union, Alabama was a territory, established by an Act of Congress, dated March 3, 1817. 3. U.S. Statutes at Large, page 371.

In pertinent part, it provided the following:

"That all that part of the Mississippi territory which lies within the following boundaries, to-wit: beginning at the point where the line of the thirty-first degree of north latitude intersects the Perdido River, thence east to the western boundary line of the State of Geor-

gia, hence along said line to the southern boundary line to the State of Tennessee, thence west along said boundary line to the Tennessee River, thence up the same to the mouth of Bear Creek, thence by a direct line to the northwest corner of Washington County, thence due south to the Gulf of Mexico, thence eastwardly, including all the islands within six leagues of the shore, to the Perdido River, and thence up the same to the beginning, shall for the purpose of a temporary government, constitute a separate territory, and be called 'Alabama.' "

The above description was subsequently changed, as authorized by the Enabling Act for the admission of Alabama into the union, to provide a line from the northwest corner of Washington County "southwardly, along the line of the State of Mississippi to the Gulf of Mexico." 3 U.S. Statutes at Large, page 489. This was done to avoid encroachment on the counties of Wayne, Greene and Jackson in the State of Mississippi.

The Enabling Act used the same description as the Act establishing Alabama as a territory and Alabama was admitted to the union by resolution of Congress approved December 14, 1819. 3 U.S. Statutes at Large, page 608. After the change in the southern boundary line as aforesaid, the following description of the boundaries of Alabama appeared in every Constitution of Alabama, including Section 37, Constitution of Alabama 1901:

"The boundaries of this state are established and declared to be as follows, that is to say: Beginning at the point where the thirty-first

degree of north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington county, in this state, as originally formed; thence southwardly, along the line of the State of Mississippi, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; . . . "

On the 2nd day of March, 1867 (14 Stat. 428), an act was passed by Congress entitled, "An Act to provide for the more efficient Government of the Rebel States." The Act declared that in these states, of which Alabama was one, there was no adequate protection for life or property; that it was for the federal government to enforce law and order until such time as state government could be established. These rebel states were divided into military districts and the President authorized to appoint military directors; these directors, or Governors, to have charge of their respective districts. These states were deprived of their representation in Congress until a proper state Constitution was adopted; that upon its approval by Congress, and upon the states' adoption of the Fourteenth Amendment to the Federal Constitution, they would be entitled to representation.

On March 23, 1867 (15 Stat. 2), the Congress passed an act entitled, "An Act supplementary to an Act entitled 'An Act to provide for the more efficient Government of the Rebel States,' passed March second, eighteen hundred and sixty-seven, and to facilitate Restoration."

This supplemental act required these states to adopt a state Constitution in conformity with the terms of the act; that after the state Constitution had been adopted by the Convention and ratified by the people, a copy should be sent to Congress, and, if the Congress approved, the state be declared entitled to representation, and her Representatives and Senators admitted to Congress.

On June 25, 1868 (15 Stat. 73), Congress passed an act entitled, "An Act to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida to representation in Congress." This act recited that these states had adopted Constitutions in accordance with the Act of March 2, 1867.

The Constitution of Alabama, which was approved by Congress and which became operative and obligatory in Alabama on the 25th day of June, 1868, contained, in pertinent part, the same description as the Enabling Act and all other Constitutions of the State of Alabama, namely "thence eastwardly, including all islands within six leagues of the shore, to the Perdido river."

The Legislature of Alabama, by Act. No. 77, General and Local Acts 1956, page 111, construed the above historical boundary of Alabama by providing, in pertinent part, as follows:

"The Director of Conservation, on behalf of the State, is hereby authorized to lease, upon such terms as he may approve, any lands or any right or any interest therein under any navigable streams or navigable waters, bays, estuaries, lagoons, bayous or lakes, and the shores along any navigable waters to high tide mark, and submerged lands in the Gulf of Mexico within the historic seaward boundary of this State, which is hereby declared to extend seaward six leagues from the land bordering the Gulf, for the exploration, development and production of oil, gas and other minerals, or any one or more of them, on, in and under such lands; and such lands or interests therein for such purposes shall be supervised and managed by the Department of Conservation."

By Act No. 158, General and Local Acts of Alabama 1956, page 24, the historical seaward boundary of Alabama is also declared to extend seaward six leagues from the land bordering the Gulf.

The description of Alabama's southern boundary does not designate the islands by name but includes all within six leagues of shore. The proper and only reasonable conclusion, therefore, is that the line runs southwardly along the line of the State of Mississippi to a point in the Gulf of Mexico six leagues from shore and thence eastwardly six leagues from and parallel to the shore to a point where said line intersects an extension of the Perdido River into the Gulf of Mexico, thence northwardly along the Perdido River extended to the point of beginning. All islands within this boundary are owned by the State of Alabama.

The State of Alabama further avers that the description of its southern boundary purports to define the exterior lines of a continuous territorial domain; and not to declare the respective boundaries of detached and separate tracts, divided from each other by the Gulf of Mexico and connected only by the bonds of political union; that the lines indicated constitute a continuous boundary, at no point diverging from Alabama's possessions, to traverse either lands or waters which Alabama does not own.

Further answering the amended complaint and the statement with respect to the amended complaint, the State of Alabama alleges that the Submerged Lands Act itself impliedly, if not expressly, gave congressional consent for the United States of America to be sued by any interested state relative to the establishment of states' rights under the Submerged Lands Act.

Wherefore, the State of Alabama prays that this its answer be taken as a cross-bill and that the United States of America be required to answer the same within thirty days and that upon a final hearing of this cause the court will order, adjudge and decree that the State of Alabama is the owner of or has the paramount rights in and to all lands, minerals, natural resources and other things, permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward from the coast line, as defined by the Submerged Lands Act, three marine leagues into the Gulf of Mexico.

The State of Alabama further prays, whether by cross-bill or otherwise, that its southern boundary be declared by the court to be a line which is six leagues

from and parallel to the shore as above described in paragraph IV of this answer, and that the claim of the United States be denied.

If the State of Alabama has mistaken the relief to which it is entitled, then it prays for such other, further and additional relief as may seem meet and proper to the court.

JOHN PATTERSON
Attorney General of Alabama

WILLIAM G. O'REAR
Assistant Attorney General

GORDON MADISON
Assistant Attorney General

E. K. HANBY
Special Assistant
Attorney General

E. C. BOSWELL
Legal Advisor to
James E. Folsom,
Governor of Alabama

NEIL METCALF
Representing James E.
Folsom, Governor of
Alabama

Of Counsel

PROOF OF SERVICE

I, John Patterson, as Attorney General of Alabama, certify that on the ..... day of December 1957, I mailed copies of the foregoing answer and cross-bill to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Texas, Louisiana, Mississippi and Florida.

JOHN PATTERSON
Attorney General of Alabama

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No. 11 Original

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

MOTIONS FOR JUDGMENT AND FOR DISMISSAL OF CROSS-BILL FILED BY THE STATE OF ALABAMA, AND MEMORANDUM IN SUPPORT OF MOTIONS AND IN RESPONSE TO DEFENDANTS' MOTION FOR PRETRIAL CONFERENCE

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11 Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

MOTION FOR JUDGMENT

The United States of America moves the Court for judgment as prayed in the amended complaint on the ground that there is no genuine issue as to any material fact and the United States is entitled to judgment as a matter of law.

J. LEE RANKIN,
Solicitor General.

JANUARY 1958.

452019—58

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11 Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

MOTION FOR DISMISSAL OF CROSS-BILL FILED BY THE STATE OF ALABAMA

The United States of America moves to dismiss the cross-bill filed by the State of Alabama on December 31, 1957, on the ground that this Court has no jurisdiction since the cross-bill constitutes a suit against the United States as to which the United States has not consented.

J. LEE RANKIN,
Solicitor General.

JANUARY 1958.

MEMORANDUM

1. Pursuant to permission theretofore given by this Court, 354 U. S. 515, the United States on November 7, 1957, filed an amended complaint in this case. Between December 24 and 31, 1957, the States of Louisiana, Texas, Mississippi, Alabama, and Florida filed their separate answers to this complaint. None of these answers raises any genuine issue as to any material fact. The issues, as framed by the pleadings, are whether the various states were granted submerged lands and the resources therein only to the extent of three miles from the coast, or three leagues. This depends upon the proper interpretation of the Submerged Lands Act, 67 Stat. 29, 43 U. S. C., Supp. IV, 1301–1315, in the light of certain historic data of which the Court may take judicial notice. For these reasons the United States submits that the case should be decided on the basis of the pleadings, briefs and argument.[1]

2. The State of Alabama, in addition to answering the amended complaint, has designated its answer as a cross-bill against the United States. (Answer of Alabama, pp. 7–8.) Insofar as this response merely re-

[1] Earlier in this proceeding, the United States, in December, 1956, filed a similar motion for judgment against Louisiana, which was then the only defendant. It was pursuant to that motion that the Court heard argument last term. The Court is respectfully referred to the Statement accompanying that motion for a more detailed statement on the appropriateness of the suggested procedure.

states the issue as posed in the complaint of the United States and asks no relief other than a declaration of Alabama's rights under the Submerged Lands Act, the fact that the answer is designated a cross-bill does not require any action by this Court. However, Alabama also asks the Court to issue an order declaring its southern boundary to be six leagues from, and parallel to, the shore. This goes beyond the issue as posed in the amended complaint filed by the United States which relates solely to rights in the submerged lands and resources thereof as granted by Congress. Under the Constitution a state may not sue the United States without its consent. *Kansas* v. *United States,* 204 U. S. 331; *Arizona* v. *California,* 298 U. S. 558. Congress has not consented either in the Submerged Lands Act or elsewhere. The cross-bill should therefore be dismissed.

3. All of the defendant Gulf States have joined in a motion for a pretrial conference. The purposes of this conference, as set forth at page 4 of the motion, are to determine the length and order of argument, whether the amended complaint has the effect of a proceeding *de novo* against Louisiana, discussion of taking evidence before an inferior tribunal or a Special Master, and the timing of briefs.

The United States has no objection to a pretrial conference if the Court believes it would be helpful. However, there is doubt that such a conference is necessary or would be helpful at this time. If the timing for briefs can be agreed upon to the satisfaction of the Court, there appears to be no need for a conference now.

The United States suggests that it be granted 60 days for the filing of its brief and that the States be granted 60 days for reply. The United States should have until one week before argument for rebuttal. Louisiana should be given the right to file at the same time as the other States such additional brief as it desires, in the light of the contents of the present complaint.

It appears to the United States premature to fix the order or time of argument now. Our present view is that the United States should be given an hour for opening, each State an hour for reply, and that the United States should be given one-half hour of rebuttal time to follow the reply of each State. If Louisiana believes it needs another hour for argument in addition to the time it has already had, the United States would not object to its being given the same time as other States. The United States has no views as to the order of replies by the States.

Although Louisiana in its original answer asked that the cause be first considered by a United States district court, none of the answers to the amended complaint, including that of Louisiana, repeats that request or asks for a Special Master. As previously pointed out, we believe that the cause is one which should be determined on the pleadings, briefs and argument. There appears to be no need for a pretrial conference on reference of the cause to an inferior tribunal or to a Special Master since that issue is not being pressed.

For the foregoing reasons we do not believe that a pretrial conference is necessary. However, if the

Court determines that it would simplify or expedite disposition of the cause, the United States has no objection to such a conference.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

JANUARY 1958.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 14, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

Answer of the State of Texas to the Motion of the United States for Judgment; Motion for Leave to Take Evidence; Motion for Severance and for Separate Trial and Argument; and Statement in Support of Motions and in Reply to Response of the United States to Motion for Pretrial Conference

WILL WILSON
Attorney General of Texas
JAMES N. LUDLUM
First Assistant Attorney General
JAMES H. ROGERS
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Austin, Texas

Of Counsel:
PRICE DANIEL
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Austin, Texas
JAMES P. HART
Brown Building
Austin, Texas
J. CHRYS DOUGHERTY
Capital National Bank Building
Austin 16, Texas

February 3, 1958

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

ANSWER OF THE STATE OF TEXAS TO THE MOTION OF THE UNITED STATES FOR JUDGMENT

In response to the Motion of the United States for Judgment as to the Second Cause of Action, the State of Texas says:

The motion of the United States for Judgment should be denied. The Submerged Lands Act (67 Stat. 29) released and relinquished to each Gulf Coastal State an area extending seaward to its boundary as it existed at the time the State became a member of the Union, not to exceed three marine leagues into the Gulf of Mexico. The Republic of

Texas by statute in 1836 (1 Laws, Republic of Texas 133) established the seaward boundary of Texas as follows:

> "That from and after the passage of this act, the civil and political jurisdiction of this republic be, and is hereby declared to extend to the following boundaries, to-wit: beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande, * * *"

This boundary existed prior to and at the time Texas became a member of the Union. The existence of this boundary requires that the motion of the United States for judgment against Texas be denied as a matter of law. However, if judgment against Texas should not be denied as a matter of law for this reason, then it should be denied because any attack made by the United States on the validity of said boundary would involve genuine issues as to material facts, such as the intent and meaning of doucuments, diplomatic correspondence, usage, contemporary construction, international law and the like. A full hearing should be granted and evidence taken. In the case of *United States v. Texas*, 339 U. S. 707, 715, this Honorable Court stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. . . . If there were a dispute as to the mean-

ing of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

WHEREFORE, the State of Texas prays that the Motion of the United States for Judgment be denied.

WILL WILSON
Attorney General of Texas

February 3, 1958

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

MOTION FOR LEAVE TO TAKE EVIDENCE

If the motion of the United States for judgment is not denied as a matter of law for the reasons stated in the answer of the State of Texas to said motion, the State of Texas moves for leave to take evidence by such means as the Court may deem most appropriate and convenient.

WILL WILSON
Attorney General of Texas

February 3, 1958

5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

MOTION FOR SEVERANCE AND FOR SEPARATE TRIAL AND ARGUMENT

The issues involved in the Second Cause of Action (against the State of Texas) in the amended complaint are so distinct and different from the issues involved in the other causes of action against the other States that, in the furtherance of convenience and to avoid prejudice, Texas moves that the Second Cause of Action (against the State of Texas) be severed and be proceeded with separately and that a separate trial as to the issues of fact and separate arguments be ordered.

WILL WILSON
Attorney General of Texas

February 3, 1958

STATEMENT

Since the filing of the Amended Complaint, the Answers of Defendants, and Defendants' Motion for Pretrial Conference, the United States has filed its Motion for Judgment and a memorandum in response to the Motion for Pretrial Conference asserting, in essence, that no fact issues are present and that the causes can be determined summarily on pleadings, briefs and arguments.

Texas joined in the motion for an early conference mainly for the purpose of (1) presenting its reasons why evidence is essential to a just determination of the Second Cause of Action, (2) informally discussing with the Court the most expeditious means of presenting the evidence consistent with the convenience of the Court and the other parties and with justice to the State of Texas and (3) exploring with the Court the advantage to be gained by severing the Second Cause of Action.

The Motion of the United States Should Be Denied as a Matter of Law

The Submerged Lands Act (67 Stat. 29) relinquished and released to the several coastal States an area extending to their respective seaward boundaries as they existed at the time each State entered the Union. By an Act of the Congress of the Republic of Texas on December 19, 1836 (1 Laws, Republic of Texas 133) the boundary of Texas was fixed at three leagues into the Gulf of Mexico, and the boundary so fixed existed prior to and at the

time Texas entered the Union. This boundary is the seaward limit of the area released and relinquished to Texas by the Submerged Lands Act. Since the Submerged Lands Act was enacted by Congress and approved by the President, this statute represents the joint action of both political branches of the Government. The Congress, with the approval of the President, has the right in its discretion to dispose of any property of the United States, and the exercise of this discretion and the fixing of the limits of this disposition of the property of the United States are political matters. *Alabama v. Texas*, 347 U. S. 272. As a matter of law, the motion of the United States for Judgment should be denied.

Necessity for Presenting Evidence

If the motion of the United States for judgment is not denied as a matter of law for the reasons stated above, then the motion should be denied because the contentions of the United States must necessarily involve material issues of fact, in so far as the United States seeks to impair or destroy the validity of the seaward boundary of Texas as it existed at the time she became a member of the Union.

In *United States v. Texas*, 339 U. S. 707, 715, this Court, with reference to the plea of Texas to be heard on the facts, stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. . . . If there

> were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

Unlike *United States v. Texas*, supra, where the seaward boundary of Texas was assumed to exist at three marine leagues but that fact was held to be immaterial to the issues then before the Court, the existence of that boundary is a main issue in the present case. Moreover, the meaning and effect of the Texas seaward boundary statute, among other documents, may be disputed by the United States. If it is, the answer must be found in "diplomatic correspondence, contemporary construction, usage, international law and the like". Under these circumstances, as said by this Court, the introduction of evidence and a full hearing are essential.

Much of the relevant source material upon which a conclusion about international law must be based is to be found in documents which the Court would not judicially notice, such as unpublished diplomatic corespondence now in the files of foreign state departments.

Texas particularly desires to offer the testimony of experts in international law upon the question of the legal significance and effect of the Texas statute establishing her boundary at three leagues into the Gulf of Mexico while she was an independent republic and the continued existence of that boundary at the time she became a member of the Union. Texas desires also to offer the testimony of experts

concerning the present state of international law relating to the area in controversy.

Even should this Court consider international law a matter of which it can take judicial notice, it nevertheless has on other occasions welcomed the opinions of experts in the field. *Black Diamond S. S. Corporation v. Robert Stewart & Sons*, 336 U.S. 386, 397.

Finally Texas will contend that various agencies of the executive branch of of the Federal Government have construed the Submerged Lands Act as releasing and relinquishing to Texas the area in controversy, and Texas desires to offer proof of administrative construction of the Act for the consideration of the Court in arriving at a judicial construction. Whether Texas is to be permitted to present the opinions of experts, together with certain other evidence such as departmental construction, as well as the means of presentation of this evidence, should be determined as a preliminary matter.

Necessity for a Severance

As to the motion of Texas for severance, and for separate trial and argument, Texas says that the transfer to each coastal State, under the Submerged Lands Act, depends upon the peculiar facts relating to each State as to its boundary prior to and at the time of its admission into the Union, or as heretofore approved by the Congress of the United States. Four of the five states involved were created out of Federal territory. Texas is the only State that was an independent republic with a right to determine its national boundary prior to its admission into the Union. She is the only State which had established an

existing boundary by its Act as an independent republic prior to its admission.

In *United States v. Texas*, 339 U.S. 707, 717, this Court said:

> "Texas prior to her admission was a Republic. We assume that as a Republic she had not only full sovereignty over the marginal sea but ownership of it, of the land underlying it, and of all the riches which it held. In other words, we assume that it then had the *dominium* and *imperium* in and over this belt which the United States now claims."

In this respect, the position of Texas is wholly different from that of the other defendant States. Because of this fact, the determination of her seaward boundary at the time of admission to the Union involves consideration of documents, laws, treaties, diplomatic correspondence, and international law wholly separate and distinct from issues, factual or legal, with which the other defendant States are concerned.

Separate and distinct areas beneath the Gulf of Mexico are at issue with respect to each of the defendants. In a sense, the United States has recognized the separate character of its causes of action, for it has pleaded a separate cause of action against each of the five defendant States. A joint trial and hearing, and particularly a joint oral argument, would prejudice the presentation of the defenses of Texas by leading to a confusion of its rights and claims with those to be asserted by the other defendant States. The issues are so important that a

complete severance, to the end that separate and distinct consideration may be had, is imperative.

Time for Filing Brief

We anticipate that the time suggested by the United States for the filing of a reply brief by Texas will be insufficient. We would prefer that the Court defer setting the time for the filing of a reply brief until after the United States has filed its brief, when Texas will be in a better position to suggest the length of time which will be required to prepare and file her reply.

Texas has no wish to delay an expeditious determination of this case so long as that can be achieved consistent with a reasonable time for Texas to assemble, digest, select, and present its proof and legal authorities. But, from the very nature of the issues involved, the proof and authorities in response to the anticipated claims of the United States cannot be assembled, sorted, and condensed for orderly presentation to this Court within the time limits suggested by the United States. If an order is to be entered now, Texas suggests that at least one hundred twenty (120) days after receipt of the brief of the United States will be needed for the filing of her reply brief.

Time for Oral Argument

Finally, we consider it premature to fix the time for oral argument pending the formation of issues

and the determination of the necessity for and the extent of evidentiary material and the means of its presentation.

Respectfully submitted,

WILL WILSON
Attorney General of Texas
JAMES N. LUDLUM
First Assistant Attorney General
JAMES H. ROGERS
Assistant Attorney General
Capitol Station
Austin, Texas

Of Counsel:

PRICE DANIEL
Governor of Texas
Austin, Texas
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Brown Building
Austin, Texas
J. CHRYS DOUGHERTY
Capital National Bank Building
Austin 16, Texas

February 3, 1958

PROOF OF SERVICE

I, Will Wilson, a member of the Bar of the Supreme Court of the United States, certify that on the 1st day of February, 1958, I served copies of the foregoing pleadings and statement by mailing, postage prepaid, copies thereof to the office of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Alabama, Florida, Louisiana, and Mississippi, respectively.

WILL WILSON

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In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA,
Defendants.

Answer of the State of Florida to the Motion of the United States for Judgment; Motion for Leave to Take Evidence; and Statement in Support of Motions and in Reply to Response of the United States to Motion for Pretrial Conference.

SPESSARD L. HOLLAND
United States Senator
Washington, D. C.

RICHARD W. ERVIN
Attorney General of Florida

J. ROBERT McCLURE
First Assistant Attorney General of Florida

FRED M. BURNS
Assistant Attorney General of Florida

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Capitol Building
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SOLICITORS FOR THE STATE OF FLORIDA

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA,
Defendants.

ANSWER OF THE STATE OF FLORIDA TO THE MOTION OF THE UNITED STATES FOR JUDGMENT.

In response to the Motion of the United States for Judgment as to the fifth cause of action, the State of Florida says:

The motion of the United States for judgment should be denied. The Submerged Lands Act (Public Law 31 of Chapter 65, Acts of Congress of 1953; 67 St. 29; Section 13.01, et seq., Title 43 U. S. Code) released and relinquished to each Gulf Coastal state an area extending seaward to its boundary as provided by its constitution or laws prior to or at the time such state became a member of the Union, or as thereafter approved by Congress, not to exceed three marine leagues into the Gulf of Mexico. The 1868 Constitution of the State of Florida, as approved by the Congress around 1868, established a seaward boundary of Florida as

> "Commencing at the mouth of the river Perdido; from thence up the middle of said river . . . to the head of the St. Mary's river; thence down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido river; thence to the place of beginning."

The existence of this boundary would appear to require that the motion of the United States

for judgment against Florida be denied as a matter of law. However, if the judgment against Florida should not be denied as a matter of law for this reason, then it should be denied because any attack made by the United States on the validity of said boundary would involve genuine issues as to material facts, such as the understanding and meaning of documents, diplomatic correspondence, usage, contemporary construction, international law, and the like. A full hearing should be granted and evidence taken. In United States v. Texas, 339 U. S. 707, 715, this Honorable Court stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts . . . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

WHEREFORE, the State of Florida prays

that the Motion of the United States for Judgment be denied.

RICHARD W. ERVIN
Attorney General of Florida

FRED M. BURNS
Assistant Attorney General
of Florida

February 10, 1958

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA,
Defendants.

MOTION FOR LEAVE TO TAKE EVIDENCE

If the Motion of the United States for Judgment is not denied as a matter of law, for the reasons stated in the Answer of the State of Florida to said motion, the said State moves for leave to take evidence by such means as the

Court may deem most appropriate and convenient.

RICHARD W. ERVIN
Attorney General of Florida

FRED M. BURNS
Assistant Attorney General
of Florida

February 10, 1958

STATEMENT

Since the filing of the Amended Complaint, the Answers of defendants, and defendants' Motion for Pretrial Conference, the United States has filed its Motion for Judgment and a Memorandum in support of its motion and in response to the defendants' Motion for Pretrial Conference asserting in essence, that no issues of fact are present and that the causes can be determined summarily on pleadings, briefs, and argument.

Florida joined in the Motion for a pretrial conference mainly for the purpose of:

(1) Presenting its reasons why evidence is essential for a just determination of the fifth cause of action;
(2) Informally discussing with the court the most expeditious means of presenting the evidence consistent with the convenience of the Court and other parties and with justice to the State of Florida.

The motion of the United States should be denied as a matter of law.—The Submerged Lands Act (68 St. 29) relinquished and released to the several coastal states an area extending to their respective seaward boundaries as they existed at the time each state entered the Union or as they may have been theretofore approved by Congress. The Congress, during its 1868 session, and in connection with the readmission of the State of Florida to representation in

Congress, approved the Florida Constitution of 1868 wherein and whereby the boundary of Florida along the coast of the Gulf of Mexico was fixed at three leagues into said gulf. This boundary is the seaward limit of the area released and relinquished to Florida by the Submerged Lands Act. Since the Submerged Lands Act was enacted by Congress and approved by the President, it represents the joint action of both political branches of the government. The Congress, with the approval of the President, has the right in its discretion to dispose of any property of the United States and the exercise of this discretion and the facts of the limits of the disposition of the property of the United States are political matters. **(Alabama v. Texas, 347 U. S. 272.)** As a matter of law, the motion of the United States for judgment should be denied.

Necessity for presenting evidence.—If the motion of the United States for judgment is not denied as a matter of law for the reasons stated above, then the motion should be denied because the contentions of the United States must necessarily involve material issues of fact, in so far as the United States seeks to impair or destroy the validity of the seaward boundary of Florida as fixed by its 1868 Constitution and approved by Congress.

In **United States v. Texas, 339 U. S. 707, 715,** this Court, with reference to the plea of Texas to be heard on the facts, stated:

"The Court in original actions, passing as it does or controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts . . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

Unlike United States v. Texas, supra, where the seaward boundary of Texas was assumed to exist at three marine leagues but the fact was held to be immaterial to the issues then before the court, the existence of the respective boundaries of the states involved is the main issue in the present case. Moreover the meaning and effect of the Florida's seaward boundary description, as defined in Florida's 1868 State Constitution and as approved by the Congress, among other documents, may be questioned by the United States. If it is, the answer must be found in "diplomatic correspondence, documentary construction, usage, international law, and the like." Under these circumstances as cited by this Court, the introduction of evidence and a full hearing are essential.

Much of the relevant source of material upon which the conclusion of international law must be based is to be found in documents which the court probably has not judicially noticed, such

as unpublished diplomatic correspondence now in the files of foreign state departments.

Florida particularly desires to offer the testimony of experts in international law upon the question of the legal significance and effect of the provisions in the 1868 Florida Constitution as approved by Congress, establishing her boundary at three leagues into the Gulf of Mexico. Florida also desires to offer the testimony of experts concerning the present state of international law relating to the area in controversy.

Even should this court consider international law a matter of which it may take judicial notice, it nevertheless has on several occasions welcomed the opinion of experts in the field. **Black Diamond S. S. Corporation v. Robert Stewart & Son, 336 U. S. 386, 397.**

Finally, Florida will contend that various agencies of the executive branch of the Federal Government have construed the Submerged Lands Act as releasing and relinquishing the area in controversy and Florida desires to offer proof of administrative construction on the Act for consideration of the Court in arriving at a judicial construction. Whether Florida is to be permitted to present the opinions of experts, together with certain other evidence, such as departmental construction as well as the means of presentation of this evidence, should be determined as a prelimiary matter.

Time for Filing Brief.—We anticipate that the time suggested by the United States for the filing of a reply brief by Florida will be insufficient. We would prefer that the Court defer setting the time for the filing of a reply brief until after the United States has filed its brief, when Florida will be in a better position to suggest the length of time which will be required to prepare and file her reply.

Florida has no wish to delay an expeditious determination of this case so long as that can be achieved consistent with a reasonable time for Florida to assemble, digest, select, and present its proof and legal authorities. But, from the very nature of the issues involved, the proof and authorities in response to the anticipated claims of the United States cannot be assembled, sorted, and condensed for orderly presentation to this Court within the time limits suggested by the United States. If an order is to be entered now, Florida suggests that at least one hundred twenty (120) days after receipt of the brief of the United States will be needed for the filing of her reply brief.

Time for Oral Argument.—Finally, we consider it premature to fix the time for oral argument pending the formation of issues and the determination of the necessity for and the ex-

tent of evidentiary material and the means of its presentation.

Respectfully submitted,

SPESSARD L. HOLLAND
United States Senator
Washington, D. C.
February 10, 1958

RICHARD W. ERVIN
Attorney General of Florida

J. ROBERT McCLURE
First Assistant Attorney
General of Florida

FRED M. BURNS
Assistant Attorney General
of Florida

ROBERT J. KELLY
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General of Florida
Capitol Building
Tallahassee, Florida

PROOF OF SERVICE

I, Richard W. Ervin, a member of the Bar of the Supreme Court of the United States, certify that on the 7th day of February, 1958, I served copies of the foregoing pleadings and statement by mailing, postage prepaid, copies thereof to the office of the Solicitor General of the United States, in the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Alabama, Texas, Louisiana, and Mississippi, respectively.

RICHARD W. ERVIN

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In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA, AND FLORIDA, DEFENDANTS

Answer of the State of Louisiana to the Motion of the United States for Judgment.

JACK P. F. GREMILLION
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State of Louisiana

W. SCOTT WILKINSON
Special Assistant Attorney General
State of Louisiana

EDWARD M. CARMOUCHE
Special Assistant Attorney General
State of Louisiana

JOHN L. MADDEN
Special Assistant Attorney General
State of Louisiana

BAILEY WALSH
Special Assistant Attorney General
State of Louisiana

HUGH M. WILKINSON
VICTOR A. SACHSE
MORRIS WRIGHT
JAMES R. FULLER
MARC DUPUY, JR.
Of Counsel

No. 11 ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA, AND FLORIDA, DEFENDANTS

Answer of the State of Louisiana to the Motion of the United States for Judgment.

In response to the motion of the United States for judgment as to the first cause of action, the State of Louisiana says:

The motion of the United States for judgment should be denied. The Submerged Lands Act (67 Stat. 29) released and relinquished to each Gulf Coastal State an area extending seaward to its boundary as it existed prior to or at the time the state became a member of the Union, or as thereafter approved by Congress, and not to exceed three marine leagues from coast into the Gulf of Mexico.

The State of Louisiana shows that by Act of March 26, 1804, 2 Stat. 283, creating the territory of Orleans; by Act of February 20, 1811, 2 Stat. 641, enabling the people of the territory of Orleans to form a constitution and state government and by Act of April 8, 1812, 2 Stat. 701, providing for

the admission of the State of Louisiana into the Union, Congress established the territory of the State of Louisiana as all that area contained within the following limits, that is to say:

> "beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all islands to the 32nd degree of latitude; thence due north, to the northernmost part of the 33rd degree of north latitude; thence along the said parallel of latitude to the River Mississippi; thence down the said river to the River Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain, to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast, . . ."

The Constitution of Louisiana, adopted January 22, 1812, conforms to the said Enabling Act of Congress.[1]

This historic boundary of Louisiana existed prior to and at the time Louisiana became a member of the Union. The existence of this boundary requires that the motion of the United States for judgment against Louisiana be denied as a matter of law. However, if judgment against Louisiana should not be denied as a matter of law for this reason, then it should be denied because any attack

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[1]Extended to and including the Florida Parishes by Act of Congress, April 14, 1812 C. 57, 2 U.S. 708.

made by the United States on the validity of said boundary would involve genuine issues as to material facts, such as the understanding and meaning of documents, diplomatic correspondence, usage, contemporary construction, international law, various treaties, acts of purchase and the like. A full hearing should be granted and evidence taken.

In the case of *United States v. Texas*, 339 U. S. 707, 715, this Honorable Court stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

Further, Louisiana says that if this Honorable Court can and will take judicial notice of such documents, diplomatic correspondence, treaties, contemporary construction, international law and the like applicable thereto, part of which are now before the Court in Louisiana's original answer and appendix thereto, then Louisiana is entitled to a judgment on the pleadings recognizing its boundary as extending three marine leagues from its coast into the Gulf of Mexico.

WHEREFORE, the State of Louisiana prays

that the motion of the United States for judgment be denied.

JACK P. F. GREMILLION
Attorney General
State of Louisiana

STATEMENT IN SUPPORT OF MOTION

Since the filing of the amended complaint, the answers of defendants, and defendants' motion for pre-trial conference, the United States has filed its motion for judgment and a memorandum in support of its motion and in response to the defendants' motion for pre-trial conference asserting in essence, that no issues of fact are present and that the causes can be determined summarily on pleadings, briefs and arguments.

Louisiana joined in the motion for pretrial conference for the respective reasons set forth therein.

THE MOTION OF THE UNITED STATES SHOULD BE DENIED AS A MATTER OF LAW

The Submerged Lands Act (68 Stat. 29) relinquished and released to the several Gulf coastal States an area extending to their respective seaward boundaries as they existed prior to or at the time each state entered the Union or as they may have been theretofore approved by Congress. Prior to the purchase by the United States of the territory of Louisiana from France, this area was owned by France and Spain and again France, all of whom claimed territory into the Gulf of Mexico far in excess of three leagues from coast. When the United States purchased the Louisiana territory, to be held in trust for the states to be formed out of it, there was no basis in law then and there is no basis in law now for a federally-owned territory in the Gulf of Mexico beyond the states formed from it. The United States has never claimed,

and the Submerged Lands Act and the Outer Continental Shelf Lands Act together make it completely clear that the United States does not now claim any federal territory in the Gulf of Mexico, but only claims extra-territorial rights, and the area within which such rights are claimed begins only where the territorial limits set in the Submerged Lands Act ends.

The United States established with Spain, Mexico and Texas a common boundary in the Gulf of Mexico three marine leagues from land at the mouth of the Sabine River. An Act of Congress of the Republic of Texas defined the boundary of the Republic of Texas thus; "beginning at the mouth of the Sabine River, and running west along the Gulf of Mexico three marine leagues from land to the mouth of the Rio Grande,"[2] and this boundary was specifically recognized by the United States in its Treaty with the Republic of Texas signed at Washington on April 25, 1838.[3] The establishment of the southeast corner of the State of Texas three leagues seaward in the Gulf of Mexico at the mouth of the Sabine River as a part of the boundary between the United States and the Republic of Texas necessarily recognized that the southwest corner of the boundary of the State of Louisiana extended at least three marine leagues into the Gulf of Mexico.[4]

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[2] 1 Gammel's Laws of Texas, pages 1193-1194.

[3] 8 Stat. 511, 4 Miller's Treaties 133.

[4] Manchester vs. Massachusetts, 139 U.S. 240, 35 L. ed. 167.

This court in *United States v. State of Texas*,[5] and in *Louisiana v. Mississippi*,[6] has twice recognized that the boundary of the State of Louisiana, as fixed by this Act of 1812, includes a water area, declaring in the latter case the "ownership of the State of Louisiana in the land and water territory" described therein, and the United States is bound by said decisions.

As shown by the above, the boundary of Louisiana along the coast of the Gulf of Mexico was fixed at least three leagues from coast into said Gulf. This boundary is the seaward limit of the area released and relinquished to Louisiana by the Submerged Lands Act. While limitations on the national territory of three miles into the Atlantic and Pacific Oceans have been recognized, no such limitation has ever been recognized respecting the Gulf of Mexico. On the contrary, from the very beginning, it was stated by President Jefferson that "the character of our coast, remarkable in considerable parts of it for admitting no vessels of size to pass near the shores, would entitle us, in reason, to as broad a margin of protected navigation, as any nation whatever."[7]

President Jefferson immediately preceded this statement by reference to the three league measurment and no authority exists to limit the national boundary in the Gulf of Mexico to three miles. Recognizing this historic background, Congress authorized

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[5] 162 U.S. 1, 17. S. Ct. 725, 40 L. ed. 867.

[6] 202 U.S. 1, 26 Sup. Ct. 408, 50 L. ed. 913.

[7] Note of Jefferson to the French Government of Nov. 8, 1793.

the President to cause a survey "within twenty leagues of any part of the shores of the United States,"[8] to be made; again the Congress authorized the Secretary of Commerce to designate the lines dividing the high seas and the inland waters.[9] The survey as actually made in the Gulf of Mexico pursuant to this authority, demonstrated the different character of the area in the Gulf of Mexico as anticipated by President Jefferson and demonstrates also the utter unreality of limiting the territorial claims of our nation and Louisiana to three miles in the Gulf of Mexico.[10]

In recognition of the unmistakable geographic facts affecting our nation, the Congress and the President, in the Submerged Lands Act, established three different boundary limits thus:

(1) Three miles in the Atlantic and Pacific Oceans;

(2) The International boundary in the Great Lakes; and

(3) Not to exceed three leagues from coast in the Gulf of Mexico.

If the area in the Gulf of Mexico be considered national territory, as we think it should, and therefore necessarily state territory, since the territories

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[8] 2 Stat. 413, Feb. 10, 1807.

[9] 28 Stat. 672, 33 U.S.C. 151, Feb. 19, 1895. Appendix to La. Brief, p. 58.

[10] Act 33 of the Legislature of Louisiana of 1954 recognizes this same coast line. See appendix to Louisiana Brief p. 54. The three leagues mentioned in the Submerged Lands Act relating to the Gulf of Mexico is measured seaward from this line.

must be co-extensive, Louisiana is entitled to three leagues in the Gulf of Mexico from its coast. If the area comes within the so-called extra-territorial rights, the Congress has the right to dispose of any property or property rights of the United States, and the exercise of this discretion and the measure of this disposition of the property or property rights of the United States are purely political matters. *Alabama v. Texas*, 347 U. S. 272. The Submerged Lands Act represents the joint action of the Congress and the President and must stand either as a recognition of Louisiana's right to its territory to its historic boundary or a disposition to Louisiana to that limit. As a matter of law, the motion of the United States for judgment should be denied.

NECESSITY FOR PRESENTING EVIDENCE

If the motion of the United States for judgment is not denied as a matter of law for the reasons stated above, then the motion should be denied because the contentions of the United States must necessarily involve material issues of fact, insofar as the United States seeks to impair or destroy the validity of the seaward boundary of Louisiana as it existed prior to or at the time she became a member of the Union.

In *United States v. Texas*, 339 U.S. 707, 715, this court, with reference to the plea of Texas to be heard on the facts, stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which

involve issues of high public importance, has always been liberal in allowing full development of the facts. . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

Unlike *United States v. Texas*, *supra*, where the seaward boundary of Texas was assumed to exist at three marine leagues but the fact was held to be immaterial to the issues then before the court, the existence of the boundaries of the gulf states involved is the main issue in the present case. Moreover, the meaning and effect of the various treaties, documents, acts of purchase, territorial descriptions, statutes, and the like, which established Louisiana's historic boundary prior to or at the time she became a member of the Union, and as defined in the act creating the Territory of Orleans, the Enabling Act and Act of Admission of the State of Louisiana, as approved by the Congress, among many other documents, may be questioned by the United States. If questioned, the answer must be found in diplomatic correspondence, documentary construction, usage, international law, and the like. Under these circumstances as cited by this Court in the above case, the introduction of evidence and a full hearing are essential.

Much of the relevant source of material upon which the conclusion of international law must be

based is to be found in documents which the court probably has not judicially noticed, such as unpublished diplomatic correspondence now in the files of foreign state departments.

Louisiana, since her admission into the Union, has at all times, and with the acquiescence and approval of the United States exercised sovereign and proprietary rights in submerged lands adjoining its coast at least three (3) leagues therefrom. Evidence on this subject will be offered by Louisiana in the form of numerous maps, charts, records of the State Land Office, records of the State Department of Conservation and of the State Mineral Board, by the records of other state offices, and by the oral testimony of state officials and other witnesses.

Should the Court take judicial cognizance of these matters, they would show that Louisiana is entitled to a judgment in its favor, declaring that its historic boundary prior to or at the time it entered the Union was more than three leagues into the Gulf of Mexico from its coast. If these matters are not the subject of judicial cognizance by this Court and are allowed to be questioned by the United States, the answer of what Congress meant in 1812, when Louisiana was admitted to the Union, must be found in diplomatic correspondence, contemporary construction, usage, possession, international law, and the like. Under these circumstances, the introduction of evidence and the taking of such

expert testimony as necessary, and a full hearing, are essential, as Louisiana has suggested to this Court in its motion to present evidence and take depositions, filed herein on December 4, 1956, and fully reserved in Louisiana's prayer in its answer to the amended complaint.

TIME FOR FILING BRIEF

The United States suggests that it be granted sixty (60) days for the filing of its brief and the States be granted sixty (60) days for reply. The State of Louisiana has no objection to this suggestion; however, if our sister States in this litigation are allowed 120 days for answer, as suggested by several of them, Louisiana should be entitled to the same time. The United States suggests that it should have until one (1) week before argument for rebuttal. Louisiana objects to this suggestion. Its counsel would not receive such a brief sent through the mail prior to departure for Washington for the oral argument.

Louisiana suggests that the reply brief of plaintiff should be filed at least forty-five (45) days prior to argument for proper consideration.

Louisiana agrees with the suggestion of the United States that she be given the right to file at the same time as the other States, such additional brief as she desires, in the light of the contents of the present complaint and the brief of the United States.

TIME FOR ORAL ARGUMENT

Finally, we consider it premature to fix the time for oral argument pending the formation of issues and the determination of the necessity for and the extent of evidentiary material, testimony of such experts as necessary and the means of its presentation.

The statement hereby filed does not abandon the motion for a pre-trial conference which Louisiana considers necessary to the orderly presentation of this case.

JACK P. F. GREMILLION
Attorney General
State of Louisiana

PROOF OF SERVICE

I, Jack P. F. Gremillion, a member of the Bar of the Supreme Court of the United States, certify that on the.....day of February, 1958, I served copies of the foregoing pleadings and statement by mailing postage prepaid, copies thereof to the Office of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Alabama, Texas, Florida and Mississippi, respectively.

JACK P. F. GREMILLION
Attorney General
State of Louisiana

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NO. 11, ORIGINAL

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA,
PLAINTIFF
v.
STATES OF LOUISIANA,
TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

ANSWER OF ALABAMA TO MOTION OF UNITED STATES FOR JUDGMENT AND MOTION TO DISMISS CROSS-BILL.

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Representing James E. Folsom, Governor of Alabama

OF COUNSEL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 11, ORIGINAL

UNITED STATES OF AMERICA,
PLAINTIFF

v.

STATES OF LOUISIANA,
TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA
DEFENDANTS

ANSWER OF ALABAMA TO THE MOTION OF THE UNITED STATES FOR JUDGMENT

In response to the Motion of the United States for Judgment, as to the fourth cause of action, the State of Alabama says:

The Motion of the United States for Judgment should be denied.

The Congress of the United States approved and the State of Alabama accepted, both before, at the time of and subsequent to admission to the union, a southern boundary which is six leagues from and parallel to the shore. This is fully pointed out in Alabama's petition for intervention and in the answer.

Congress had the legal right to enact the Submerged Lands Act, and the State of Alabama has the ownership of, or the paramount rights in, the lands and natural resources three marine leagues from the coast line.

REPLY TO MOTION TO DISMISS CROSS-BILL

The Submerged Lands Act itself is authority for the cross-bill. To hold otherwise will be to say that the states could never establish boundary and could never know judicially what each has under the Act, unless the United States first brought suit.

What did this Court mean when it granted the right to intervene? Did it not mean that each state could come forward with its own claim. We think so.

If the Court feels that the State of Alabama can have full relief under the answer, without the cross-bill, then the cross-bill is not insisted upon, otherwise, it is.

STATEMENT

If at this stage anyone is entitled to judgment, it is not the United States but instead the defendant states. Each has shown a description approved by Congress sufficiently far distant to embrace three-marine leagues from the coast line.

In **The State of Florida v. The State of Georgia,** 17 How. 478, 15 L. Ed. 181, it was held that in deciding the question of boundary, the court will consider the evidence offered by the United States or either of the states.

In cases of this kind, it is the duty of the court, as stated in the following cases, to mould the rules of chancery practice and pleading in such manner as to bring the case to a final hearing on its real merits. This case is too important in its character, and the in-

terests concerned too great to be decided without a full hearing and opportunity to present evidence. " . . . The most liberal principles of practice and pleading ought unquestionably to be adopted in order to enable both parties to present their respective claims in their full strength." **The State of Rhode Island v. The State of Massachusetts**, 14 Pet. 210, 10 L. Ed. 423, at page 445; see also 12 Pet. 657, 9 L. Ed. 1233; 13 Pet. 23, 10 L. Ed. 41; 15 Pet. 233, 10 L. Ed. 721.

The pre-trial conference should be held and the Court should help formulate the real issue. If it does not, there will be contentions, briefs and motions without end.

Respectfully submitted,

JOHN PATTERSON
Attorney General of Alabama

WILLIAM G. O'REAR
Assistant Attorney General

GORDON MADISON
Assistant Attorney General

E. K. HANBY
Special Assistant Attorney General

E. C. BOSWELL
Legal Advisor to
James E. Folsom,
Governor of Alabama

NEIL METCALF
Representing James E.
Folsom, Governor of
Alabama

OF COUNSEL

PROOF OF SERVICE

I, John Patterson, as Attorney General of Alabama, certify that on the 19 day of February 1958, I mailed copies of the foregoing Answer of Alabama to the Motion of the United States for Judgment to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington, D. C., and to the Attorneys General of the States of Texas, Louisiana, Mississippi and Florida.

John Patterson

JOHN PATTERSON
Attorney General of Alabama

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 10 Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

ANSWER OF THE STATE OF MISSISSIPPI TO THE MOTION OF THE UNITED STATES FOR JUDGMENT: MOTION FOR LEAVE TO TAKE EVIDENCE: AND STATEMENT IN SUPPORT OF ANSWER AND MOTION

JOE T. PATTERSON
Attorney General of Mississippi
New Capitol Building
Jackson, Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General
New Capitol Building
Jackson, Mississippi

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 11 Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

ANSWER OF THE STATE OF MISSISSIPPI TO THE MOTION OF THE UNITED STATES FOR JUDGMENT

In response to the Motion of the United States for Judgment as to the Third Cause of Action (against the State of Mississippi), the State of Mississippi says:

The Motion of the United States for Judgment should be denied. The Submerged Lands Act (67 Stat. 29) released and relinquished to each Gulf Coastal State an area extending seaward to its boundary as it existed at the time the State became a member of the Union, or as approved by Congress prior to the passage of said Act, not to exceed three marine leagues into the Gulf of Mexico. The Act of Congress admitting Mississippi as a state into the Union on December 10, 1817 (3 Stat. 472) established its seaward boundary at six leagues from shore into the Gulf of Mexico when it fixed the

boundaries of said state by reference to the Enabling Act of March 1, 1817 (3 Stat. 348), as follows:

> "That the said state shall consist of *all the territory included within the following boundaries*, to-wit: beginning on the river Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the north-west corner of the county of Washington, thence due south to the Gulf of Mexico, thence westwardly, *including all the islands within six leagues of the shore*, to the most eastern junction of Pearl River with Lake Borgne, thence up said river to the thirty-first degree of north latitude, thence west along the said degree of latitude to the Mississippi river, thence up the same to the beginning." (Emphasis supplied)

The original Constitution of the State of Mississippi, adopted in the year 1817, prior to its admission as a state into the Union, likewise defined Mississippi's seaward boundary as being six leagues from shore into the Gulf of Mexico. The existence of this boundary prior to and at the time Mississippi became a member of the Union requires that the motion of the United States for judgment against the State of Mississippi be denied as a matter of law. However, if the judgment against the State of Mississippi should not be denied as a matter of law for this reason, then it should be denied because any attack made by the United States on the validity of said boundary would involve genuine issues as to material facts, such as the understanding

and meaning of documents, diplomatic correspondence, usage, contemporary construction, and the like. A full hearing should be granted and evidence taken. In *United States vs. Texas*, 339 U. S. 707, 715, this Honorable Court stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts . . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

WHEREFORE, the State of Mississippi prays that the Motion of the United States for Judgment be denied.

JOE T. PATTERSON
Attorney General of Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General

February, 1958

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 11 Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

MOTION FOR LEAVE TO TAKE EVIDENCE

If the Motion of the United States for Judgment is not denied as a matter of law, for the reasons stated in the Answer of the State of Mississippi to said motion, the State of Mississippi moves for leave to take evidence by such means as the Court may deem most appropriate and convenient.

JOE T. PATTERSON
Attorney General of Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General

February, 1958

STATEMENT

The Motion of the United States Should Be Denied as a Matter of Law

The Submerged Lands Act (67 Stat. 29) released and relinquished to the several Gulf Coastal States an area extending to their respective seaward boundaries as they existed at the time each state became a member of the Union, or as approved by Congress prior to the passage of said Act, not to exceed three marine leagues into the Gulf of Mexico. By the original Constitution of the State of Mississippi, adopted in the year 1817, prior to its admission as a state into the Union, and by the act of Congress admitting Mississippi as a state into the Union on December 10, 1817 (3 Stat. 472), the seaward boundary of the State of Mississippi was established at six leagues from shore into the Gulf of Mexico. Hence, it is apparent that the property released and relinquished to the State of Mississippi under said Submerged Lands Act extends three marine leagues into the Gulf of Mexico since Mississippi's historic boundary extends even beyond said three marine league line.

Since the Submerged Lands Act was enacted by Congress and approved by the President, this statute represents the joint action of both political branches of the government. The Congress, with the approval of the President, has the right in its discretion to dispose of any property of the United States, and the exercise of this discretion and the fixing of the limits of this disposition of the property of the United States are political matters. *Alabama vs. Texas*, 347 U. S. 272. As a matter of law, the motion of the United States for judgment should be denied.

Necessity for Presenting Evidence

If the motion of the United States for judgment is not denied as a matter of law for the reasons stated above, then the motion should be denied because the contentions of the United States must necessarily involve material issues of fact, in so far as the United States seeks to impair or destroy the validity of the seaward boundary of Mississippi as it existed at the time it became a member of the Union.

In *United States vs. Texas*, 339 U. S. 707, 715, this Court, with reference to the plea of Texas to be heard on the facts, stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts . . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

Unlike in *United States vs. Texas*, supra, where the seaward boundary of Texas was assumed to exist at three marine leagues but that fact was held to be immaterial to the issues then before the Court, the location of the seaward boundary of the State of Mississippi is a main issue in the present case. Moreover, the meaning and effect of Mississippi's seaward boundary description, as defined in Mississippi's Constitution of 1817 and also in the Act of Congress admitting Mississippi as a state into the Union on December 10, 1817

(3 Stat. 472), among other documents, may be disputed by the United States. If such an issue of fact is thus raised, it will be necessary to resort to diplomatic correspondence, contemporary construction, usage and the like in order to adequately answer the questions raised, thereby rendering essential the introduction of evidence and a full hearing for the proper determination of the issues.

We believe and respectfully contend that the issues herein are wholly internal matters and that international law has no application whatsoever and is entirely irrelevant to these proceedings. However, should the United States attempt to predicate its case, or any part thereof, upon principles of international law, and should this Honorable Court consider that international law has some bearing on the issues presented herein, we respectfully submit that much of the source material upon which conclusions within the realm of international law are based is found in documents of which this Court probably has not taken judicial notice, such as letters, speeches, and unpublished diplomatic correspondence now in the files of foreign state departments, some of which documents would be necessary to the proper and complete defense of this case.

Moreover, should this Court deem international law pertinent to the issues herein, the State of Mississippi particularly desires to offer the testimony of experts in the field of international law upon the question of the legal significance and effect of the boundary provision contained in Mississippi's Constitution of 1817, adopted prior to its admission as a state into the Union, the provision of the Act of Congress admitting Mississippi as a state into the Union (3 Stat. 472) regarding

boundaries, and the boundary provisions of the Constitutions subsequently adopted by the State of Mississippi, all of which provisions establish Mississippi's southern boundary line at six leagues from shore into the Gulf of Mexico. Also, in the event international law is deemed to be relevant, the State of Mississippi desires to offer the testimony of experts concerning the present state of international law relating to the area in controversy.

The question of whether Mississippi should be permitted to present the evidence above mentioned, as well as the manner of presentation of this evidence, should be determined as a preliminary matter.

Time for Filing Brief

We anticipate that the time suggested by the United States for the filing of a reply brief by Mississippi will be insufficient. We would prefer that the Court defer setting the time for the filing of a reply brief until after the United States has filed its brief, when Mississippi will be in a better position to suggest the length of time which will be required to prepare and file its reply.

Mississippi has no wish to delay an expeditious determination of this case so long as that can be achieved consistent with a reasonable time for Mississippi to assemble, digest, select, and present its proof and legal authorities. But, from the very nature of the issues involved, the proof and authorities in response to the anticipated claims of the United States cannot be assembled, sorted, and condensed for orderly presentation to this Court within the time limits suggested by the United States. If an order is to be entered now, Mississippi suggests that at least one hun-

dred twenty (120) days after receipt of the brief of the United States will be needed for the filing of her reply brief.

Time for Oral Argument

Finally, we consider it premature to fix the time for oral argument pending the formation of issues and the determination of the necessity for and the extent of evidentiary material and the manner of its presentation.

Respectfully submitted,

JOE T. PATTERSON
Attorney General of Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General

February, 1958

PROOF OF SERVICE

I, Joe T. Patterson, Attorney General of the State of Mississippi, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of February, 1958, I served copies of the foregoing pleadings and statement on the several parties to said cause as follows:

(1) On the United States, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington 25, D. C., and

(2) On the States of Texas, Louisiana, Alabama and Florida, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to their respective Attorneys General at their respective addresses as follows: Capitol Building, Austin, Texas; Capitol Building, Baton Rouge, Louisiana; Judicial Building, Montgomery, Alabama; and Capitol Building, Tallahassee, Florida.

JOE T. PATTERSON
Attorney General of Mississippi

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No. 11, Original

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO MOTIONS FOR LEAVE TO TAKE EVIDENCE AND FOR SEVERANCE

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO MOTIONS FOR LEAVE TO TAKE EVIDENCE AND FOR SEVERANCE

The State of Texas has moved for leave to take evidence, and for severance and separate trial and argument; the States of Florida and Mississippi have moved for leave to take evidence. The United States submits that Texas' motion for severance should be denied and that the motions for leave to take evidence should be denied at this time or deferred for hearing and decision with the Federal Government's motion for judgment.

1. Texas' motion for severance should be denied. In the light of representations made by Texas in its *amicus curiae* brief filed by leave of the Court, *United States* v. *Louisiana*, 353 U. S. 980, this Court has heretofore determined that "the issues in this litigation are so related to the possible interests of Texas, and

other States situated on the Gulf of Mexico, in the subject matter of this suit, that the just, orderly, and effective determination of such issues requires that they be adjudicated in a proceeding in which all the interested parties are before the Court." *United States* v. *Louisiana*, 354 U. S. 515. Texas now asks the Court to reverse that determination. No adequate reason for doing so has been shown.

The affirmative position of the United States is the same as to all five defendants. It is, briefly, that the United States holds all rights in the seabed except those which it has granted to the States; that its only such grant was by the Submerged Lands Act, 67 Stat. 29, 43 U. S. C., Supp. IV, 1301–1315, which was specifically limited to land within State boundaries; that the boundary of the United States has never extended more than three miles from the coast; that State boundaries cannot extend farther than the national boundary; and that consequently no State can have received anything beyond the national boundary under the terms of the Submerged Lands Act. This claim consists entirely of propositions of law, or facts subject to judicial notice, common to the claims against all five defendants, and so presents an appropriate situation for joinder. Rule 20 (a), Federal Rules of Civil Procedure.

Each of the defendants has asserted reasons, based generally on peculiarities of its own history, for claiming that its boundary is more than three miles

from the coast.[1] Texas contends that a joint argument would "prejudice the presentation of the defenses of Texas by leading to a confusion of its rights and claims with those to be asserted by the other defendant States." Answer of the State of Texas to the Motion of the United States for Judgment, etc., 10. The United States finds no reason to apprehend that the Court will fall into any such confusion. To permit complete separation of the contentions of the defendants, if they wished to defend separately, we stated a separate cause of action against each, although those causes of action are identical except for reference to prior judgments as against Louisiana and Texas. Each defendant has answered separately, and presumably each will file a separate brief. Our own brief will deal with the defenses of each separately, except for using cross-references to avoid duplication where similar defenses are made by more

[1] Louisiana asserts, among other things, that Texas and Florida have three-league boundaries, and that "equal footing" entitles Louisiana to as much. Answer of the State of Louisiana to the Amended Complaint, 11–12; Answer of the State of Louisiana [to the original complaint], 23–24, incorporated by reference, Answer of the State of Louisiana to the Amended Complaint, 12. The United States denies that either of those States has a three-league boundary. Amended Complaint, 8, 17. In any event, it denies that "equal footing" would entitle Louisiana to claim a grant of three leagues under the Submerged Lands Act. Brief for the United States in Support of Motion for Judgment [against Louisiana, on the original complaint], 150–152. On the pleadings, however, the rights of Texas and Florida have unquestionably been made ingredients of Louisiana's claim, a circumstance which the Court may consider entitled to some weight in deciding Texas' motion for severance.

than one defendant. In the memorandum accompanying our Motion for Judgment, etc. (filed January 20, 1958), we suggested (p. 5) an order of argument which would permit each State's defenses to be presented and rebutted separately. The only effect of the severance requested by Texas would be to subject the Court and counsel to the unnecessary burden of a repetition of the Government's case in chief.

2. The motions for leave to take evidence should be denied or deferred for hearing and decision with the Federal Government's motion for judgment. The United States has moved for a judgment, as against the defendant States, fixing its rights in the seabed. If the Court agrees with us that the determination of the extent of the national and state boundaries can be made as a matter of law in the light of facts subject to judicial notice, then the motions for leave to take evidence should be denied. If the Court is not prepared so to rule at this time, it should consider the motions simultaneously with the Government's motion for judgment, rather than now ordering the taking of evidence on a multiplicity of factual issues which the ruling on the Government's motion may render wholly irrelevant. That was the procedure followed in *United States* v. *Louisiana*, 339 U. S. 699, 706, and *United States* v. *Texas*, 339 U. S. 707, 720, where motions for jury trial and to take depositions and evidence before a special master, made some months before briefs on the merits were filed, were denied simultaneously with the rulings on the motions for judgment. That was also the procedure followed at the last Term when the

case involved only Louisiana; the Federal Government's motion for judgment and the State's motion for leave to take depositions were both set down for argument together. 352 U. S. 979; see 354 U. S. 515.[2]

CONCLUSION

For the foregoing reasons, Texas' motion for severance should be denied and Texas', Florida's, and Mississippi's motions for leave to take evidence should be denied or deferred for consideration with the Federal Government's motion for judgment.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

MARCH 1958.

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[2] After entry of a judgment in general terms, it may be necessary to enter supplementary judgments giving the general judgment precise application to particular terrain, and evidence may need to be taken for that purpose, as in *United States* v. *California*, 332 U. S. 19, 342 U. S. 891, but no such question is presented by the instant motions or at this time.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 10 Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

Joint Memorandum of the States of Louisiana, Texas, Mississippi, Alabama, and Florida Pertaining to Schedule for Filing of Briefs and Order of and Allotment of Time for Oral Argument

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March 17, 1958

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 11, Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

Joint Memorandum of the States of Louisiana, Texas, Mississippi, Alabama, and Florida Pertaining to Schedule for Filing of Briefs and Order of and Allotment of Time for Oral Argument

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Pursuant to the Court's order of March 3, 1958, counsel for the States of Louisiana, Texas, Mississippi, Alabama, and Florida, respectively, suggest that the United States be required to file its brief by May 15, 1958, that the States be required to file their respective replies thereto by August 15, 1958, and that any brief in rebuttal or further reply by any party be filed by September 15, 1958.

Counsel for defendants propose to confer with counsel for the United States and with each other seeking agreement in order to suggest to the Court the order of and allotment of time for oral arguments, all within thirty days from March 3, 1958, in accordance with the order of the Court.

Respectfully submitted,

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PROOF OF SERVICE

I, Will Wilson, a member of the Bar of the Supreme Court of the United States, certify that on the 14th day of March, 1958, I served a copy of the foregoing memorandum by mailing, postage prepaid, copies thereof to the office of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C.

WILL WILSON
Attorney General of Texas

March 17, 1958